United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7207

United States Court of Appeals

For the Second Circuit

Docket No. 76-7207

PRUDENTIAL OIL CORPORATION,

Plaintiff-Appellee,

vs.

PHILLIPS PETROLEUM COMPANY,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

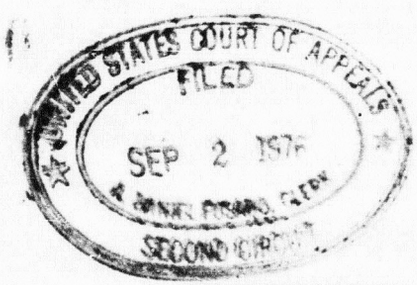
(67 Civ. 3748 (C.L.B.))

JOINT APPENDIX

Volume I—A-1—A-526

SULLIVAN & CROMWELL
Attorneys for Defendant-Appellant
48 Wall Street,
New York, N. Y. 10005
(212) 952-8100

GOLD, FARRELL & MARKS
Attorneys for Plaintiff-Appellee
595 Madison Avenue
New York, N. Y. 10022
(212) 935-9200



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Volume I

PAGE

Docket Entries A-1

1. Initiation of the Action

A. Complaint A-2

B. Answer of Defendant A-21

C. Stipulated Facts A-30

D. Stipulated Facts with Reference to Petroleum, its Basic and Intermediate Processing, its Products and the Associated Industrial Activities A-60

E. Statement of the Issues to be Tried A-96

2. Preliminary Matters

A. Stipulation, December 19, 1967 ..... A-100

B. Answers to Defendant's Jurisdictional Interrogatories, sworn to April 26, 1971 ..... A-101

C. Opinion of Judge Edelstein Denying Defendant's Motion to Strike Plaintiff's Jury Demand A-130

3. Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction

A. Notice of Motion by Phillips to Dismiss Action for Lack of Subject Matter Jurisdiction, April 3, 1975 ..... A-140

B. Affidavit of Robert MacCrate, April 3, 1975 .. A-141

C. Exhibits to the Affidavit of Robert MacCrate . A-153

D. Affidavit of Nathan M. Shippee in Opposition to Motion to Dismiss, April 30, 1975 ..... A-245

Volume I

PAGE

E. Exhibits Annexed to the Affidavit of Nathan Shippee A-260

F. Reply Affidavit of Robert MacCrate, sworn to May 2, 1975 ..... A-425

G. Minutes of Hearing May 2, 1975 ..... A-433

H. Supplemental Affidavit of Thomas R. Farrell, sworn to May 7, 1975 ..... A-468

I. Opinion of Judge Brieant, June 18, 1975, Denying Defendant's Motion to Dismiss A-471

J. Order of Judge Brieant, July 7, 1975, Denying Defendant's Motion to Dismiss, and Certifying the Question of Subject Matter Jurisdiction for Interlocutory Review Pursuant to 28 U.S.C. § 1292(b) A-491

K. Order of the United States Court of Appeals for the Second Circuit, dated August 13, 1975 A-493

4. Trial and Post-Trial Memoranda and Orders of the District Court, and Post Trial Developments

A. Memorandum and Order of Judge Brieant, December 30, 1975 ..... A-494

B. Memorandum and Order of Judge Brieant, March 3, 1976 ..... A-503

C. Findings of Fact and Conclusions of Law, March 3, 1976 ..... A-514

D. Judgment of Judge Brieant, March 3, 1976 ... A-522

E. Memorandum Endorsement of Judge Brieant, March 25, 1976 ..... A-525

F. Defendant's Notice of Appeal, April 23, 1976 A-526

Volumes II-V

PAGE

5. Trial Transcript

A. *Testimony, January 5—January 22, 1976*

1. Nathan M. Shippee

a. Direct examination 125

b. Cross examination 408

c. Redirect examination 540

d. Additional cross examination 567

2. Edward J. Willey

a. Direct examination 613

b. Cross examination 661

c. Redirect examination 745

3. Robert B. Anderson

a. Direct examination 746

b. Cross examination 771

c. Redirect examination 799

4. Thomas R. Young

a. Direct examination 803

b. Cross examination 849

c. Redirect examination 909

d. Additional cross examination 948

Volumes II-V

		PAGE
5.	Jesus Diaz-Hernandez	
	a. Direct examination	916
	b. Cross examination	934
6.	Miller W. Conn (Deposition Testimony)	959
7.	August Dale Fischbeck (Deposition Testimony)	968
8.	William W. Keeler (Deposition Testimony)	970
9.	James L. Walker	
	a. Direct examination	981
	b. Cross examination	1035
	c. Redirect examination	1071
	d. Additional cross examination	1078
10.	Lawrence M. Rosenthal	
	a. Direct examination	1083
	b. Cross examination	1151
	c. Redirect examination	1186
	d. Additional cross examination	1189
11.	Sam John Van Hyning, Jr.	
	a. Direct examination	1261
	b. Cross examination	1321

Volumes II-V

PAGE

12. August Dale Fischbeck
    a. Direct examination 1345
    b. Cross examination 1389

13. Thomas R. Holland
    a. Direct examination 1458
    b. Cross examination 1462

14. Stanley L. Learned
    a. Direct examination 1475
    b. Cross examination 1520

15. Leo H. Johnstone
    a. Direct examination 1621
    b. Cross examination 1635
    c. Redirect examination 1659

16. Roy M. Waldby
    a. Direct examination 1663
    b. Cross examination 1707
    c. Redirect examination 1756
    d. Additional cross examination 1763

17. Bruce K. Brown
    a. Direct examination 1765
    b. Cross examination 1827

18. Joe F. Moore
    a. Direct examination 1841
    b. Cross examination 1877
    c. Redirect examination 1902

Volumes II-V

PAGE

19. Rodger M. Widmann
    a. Direct examination 1905
    b. Cross examination 1926
    c. Redirect examination 1931
    d. Additional cross examination 1932

20. Nathan M. Shippee (Deposition Testimony) 1937

21. W. Josiah Norton (Deposition Testimony) 1943

22. Oscar L. Chapman (Deposition Testimony) 1974

23. Rafael Durand (Deposition Testimony) 1991

24. Stanley L. Learned (Deposition Testimony) 2011

25. K. S. Adams (Deposition Testimony) 2014

B. *Closing Statements*
    1. For Defendant 2075
    2. For Plaintiff 2147

C. *Charge to the Jury* 2220

D. *Answers to Special Interrogatories* 2315

Docket Entries

CIVIL DOCKET 67 CIV 3748

JUDGE EDELSTEIN

67 CIV 3748

A-1

UNITED STATES DISTRICT COURT

Jury demand date: 10-27-67 by pltff.

Form No. 106 Rev.

JUDGE EDELSTEIN

TITLE OF CASE	ATTORNEYS
PRUDENTIAL OIL CORPORATION	For plaintiff:
VS	[redacted] 5-5-75
PHILLIPS PETROLEUM COMPANY	Gold, Farrell & Marks (co-counsel) 595 Madison Ave, NYC 10022
	ABRAMS & SASSOWER One N.Y. Plaz., NYC 10004 943-2600
	For defendant: Sullivan & Cromwell 48 Wall St. 10005

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB
J.S. 5 mailed . X	Clerk		8-24-67 8-24-67	Palmer CERTIFIED	NT -	
J.S. 6 mailed ✓	Marshal					
Basis of Action: BREACH OF AGREEMENT	Docket fee					
	Witness fees					
Action arose at:	Depositions					

BEST COPY AVAILABLE

67 CIV 3748 PRUDENTIAL OIL COR. ORATION VS P[illegible]

JUDGE EDELSTE[illegible]

Order or ent Noted

DATE	PROCEEDINGS
SEPT.27-67	Filed complaint and issued summons
Oct. 6-67	Filed summons & return, served deft. by Mr. Hutchenson - 9-29-67
Oct.20-67	Filed Notice to take Deposition, and issued 3 subpoenas.
Oct.20-67	Filed ANSWER.
Oct 26-67	Filed deft's notice to take deposition of Thomas H. Young and [illegible] issued)
Oct 27-67	Filed pltff's jury demand
Nov.9-67	Filed Request for Production of Documents. (second series)
Nov.17-67	Filed Notice to take Deposition and issued subpoena.
Nov 28-67	Filed pltff's notice to take deposition of deft. by Mr. Stanley M. Learned
Nov 28-67	Filed pltff's notice to take deposition of Oscar Chapman, Esq.
Dec.12-69	Filed consent order that depositions indicated proceed consecutively on 2-15-69 and that all discovery be completed and a note of issue filed by pltff. no later that 5-5-70, etc. Edelstein, J.
Feb.6-70	Filed consent order that deposition indicated proceed consecutively on 4-15-70 and all discovery be completed and note of issue filed by pltff. no later than 7-6-70. Edelstein, J.
June 11-70	Filed pltff's interrogatories to deft
June 22-70	Filed stip & order that deft's time to object or move with respect to pltff's inte is extended from 6-21 to 7-21-70 & that time for deft to answer pltff's interro is extended from 6-26 to 7-21-70-So ordered-Edelstein, J.
Jul 8-70	Filed deft's notice of deposition of Wm. Wright
July 15-70	Filed Stip & Order that pltff's time to file a note of issue in this action is extended to 11-6-70 and all discovery in this action to be completed by 11-6-7 and no further extension of time will be granted unless good cause is shown. So Ordered: Edelstein, J.
Jul 16-70	Filed stip & order extending deft's time to object etc to pltff's interrogs to 9-4-70 - time for deft to ans interrogatis extended to 9-4-70 - Edelstein, J
Aug 26-70	Filed stip & order that deft's time to answer interrogatories of pltff is extended from 9-4-70 to 9-15-70-So ordered-Palmieri, J.
Sep 16-70	Filed deft's answers & objections to interrogatories
Sep 25-70	Filed deft's notice to take deposition of William Wright on 10-7-70
Nov 9-70	Filed stip & order that pltff's time to file a note of issue is extended to 2-6-70 that alldiscovery be completed by 2-6-71-So ordered-Edelstein, J.
Dec 14-70	Filed deft's response to request for production of documents
Jan 25-71	Filed deft's interrogatories (first series)
Jan 25-71	Filed deft's request for admissions (first series)
Feb 18-71	Filed stip & order that pltff's time to file a note of issue is extended to 5-6-7 & that all discovery in this action be completed by 5-6-71 & nofurther extens of time will be granted unless good cause is shown-So ordered-Edelstein, J.
Mar 16-71	Filed deft's Questions to be propounded to Oscar L. Chapman on Behalf of deft. at taking of his deposition as a witness
Apr 7-71	Filed pltffs' corss-quastions to be propounded to Oscar L. Chapman
Apr 20-71	Filed deft's interrogatories (2nd series)
Apr 28-71	Filed pltff's answers & objections to interrogatories
May 7-71	Filed stip & order that pltff's time to file a note of issue is extended to 9-6- & that all discovery be completed by 9-6-71 & no further extension of time wil be granted unless good cause is shown-So ordered-Edelstein, J.
June 25-71	Filed stip & order that pltff's time to answer deft's interrogs. (2nd series i extended to 7-6-71-So ordered-Edelstein, J.
Aug 10-71	Filed deft's amended interrogs. #25(j) & (k) - 1st series
Sep 14-71	Filed stip & order that pltff's time to file a note of issue is ext. to 1-6-72 & that all discovery be completed by 1-6-72-So ordered-Edelstein, J.
Oct 12-71	Filed deft's response to request for production of documents

...TIAL OIL CORP VS PHILLIPS PETROLEUM CORP. A-1b 67 Civ 3748

...l Docket Continuation page 2

DATE	PROCEEDINGS	Date Order Judgment
Oct 15-71	Filed deft's notice to take deposition of Arthur Little Inc. on 10-22-71	
Jan 4-72	Filed stip & order that pltff's time to file a note of issue is ext. to 4-6-72 & that all discovery in action be completed by 4-6-72 & no further extension of time will be granted unless good cause is shown-So ordered-Edelstein, Ch.J	
Feb 22-72	Filed notice of appearance of Gold, Farrell & Marks for pltff	
Feb 22-72	Filed pltff's notice to take deposition of deft on 3-1-72	
Apr 17-72	Filed stip & order that pltff's time to file a note of issue is ext. to 10-6-72 & that all discovery in this action is completed by 10-6-72 & no further extension of time will be granted unless good cause is shown-So ordered-Edelstein, Ch.J	
Apr 21-72	Filed pltff's notice to take deposition of Robert Anderson as a witness on 5-23-72	
Jun 1 72	Filed Stip & Order that the deposition of Robt. B. Anderson is adj. to June 15 1972 So Ordered- Edelstein, Ch J.	
Jul 11-72	Filed stip and order that the deposition of Robert B. Anderson, a witness be adjourned to 9-21-72 Edelstein Ch. J.	
Oct5-72	Filed stip & order that all discovery in this action be completed by Jan 6, 1973 Edelstein J.	
Oct13-72	Filed pltff's Notice to take deposition of Michael Shea, on Nov 8, 1972.	
Dec6-72	Filed defts Notice to take deposition of Bruce K. Brown on Dec 13th,, 1972.	
Dec8-72	Filed Notice that Pltff. will takedeposition of Donald M. Blinken on Dec 21 , 1972.	
ec22-72	Filed deposition of Michael J. Shea Record of Transcript of Proceedings, of Nov 27th, 1972.	
Jan19-73	Filed stip & Order that the between the respective parties that pltffs time to file a note of issue is extended to April 6th, 1973. EdelsteinJ.	
Mar 26.73	Filed Notioce to take deposition by Dft. upon W.J. Norton.	
Apr 6.73	Filed Notice to take deposition upon Samuel Van Hyning by Dft. Phillips Pet Petroleum Co.	
Jun 25.73	Filed Dft. Notice of Deposition upon Universal Oil Products Co., by E.W. Schnabel.	
Jun 25.73	Filed Dft. Notice of Deposition upon Universal Oil Products Co. by Frank W.Dusek.	
Jun 25.73	Filed Dft. Notice of Deposition upon Universal Oil Products.Co.,by E.J.Swain.	
Aug-13-73	Filed Deft. Notice of Depostion upon Jesus Diaz Hernandez.	
[illegible]	Filed Transcript of Proceedings dated Nov 27 1972	
Sep.27-73	Filed notice of deft. to take deposition of Mr. Rafael Durand.	
Oct 9, 73	Filed Notice of Motion and Affdvt for deft to strike the pltffs demand for a jury trial in this action.	
Oct 9, 73	Filed defts Memorandum in support of Motion by deft to strike pltffs demand for a jury trial.	
Jan 10.74	[illegible]	
Jan 18.74	[illegible]	
Jan 17.74	[illegible]	
7-20-74	Filed transcript of record of proceedings, dated 1-7-74.	
7-25-74	Filed transcript of record of proceedings, dated 1-24-74	
Sep 23.74	Filed Memorandum in opposition to motion to strike pltffs. demand for jury trial.	
Sep 23.74	Filed Defts. reply memorandum in support of motion to strike pltffs. demand for a jury trial.	
Jan 20.75	Filed Pltffs. Interrogs. & request for prodiction of documents relating to proposed Expert Testimony.	
3-20-75	Reassigned to Judge Brieant mn	
4-5-75	Filed Memorandum#2200.....Against this background deft's motion must be viewed. For reasons set forth below the court believes that claims properly triable to a jury exist in the instant action which require that pltff's demand for a jury trial be upheld.....Edelstein, Ch.J. mn	

CONTINUED ON PAGE #3

A-1c

DATE	PROCEEDINGS	Date Judgment
4-7-75	Filed Pltff's Answers to deft's suppl. interrogs. dated 1-17-75.	
4-29-75	Filed Pltff's Affdvt. by N. M. Shippee, in opposition to motion by Phillips Petro. to dismiss action for lack of federal jurisdiction..	
4-29-75	Filed Pltff's Memo in ippposition to deft's mtion to dismiss.	
4-2-75	Filed Reply affdvt of R. MacCrate in reply to affdvt of N.M Shippee.	
4-2-75	Filed Reply memo of Phillips Petro Co in support of application to dismiss.	
5-5-75	Filed Stip. & Consent substituting attys for the pltff. from Palmer & Serles to the firm of ABRAMS & SASSOWER. ....Brieant,J.	
5-8-75	Filed Pltff affdvt. by T. R. Farrell, in response to the reply affdvt of R. MacCrate.	
5-18-75	Filed Memo. of Phillips Petro Co in supportof Appli. and motion to dismiss.	
5-18-75	Filed Notice of Motion by deft to dismiss the complt.	
5-18-75	Filed ~~Pltffs~~ Cross Motion of deft for an order staying all discovery...ret 7-3-75. .....Rm 905 at 10Am.	
6-13-75	Filed Memorandum Decision 42612.....Deft's motion to dismiss the complt. for lack of subject matter jurisdiction is denied....Further, and in closing, it must be observed that the problems raised here, will, if an interlocutory appeal is certified, prevent trial of this case during the period req. by the Plan for the Disposition of Old Cases adopted by this Court, previously mentioned...Settle Order on five days notice....Brieant,J.mn	
7-7-75	Filed in Court letter from Gold Farrell & Marks in opposition to the proposed counter-order submitted by (Phillips.)	
7-7-75	Filed Order That deft (Phillips Petr.) motion to dismiss the complt is denied. The Court is of the opinion & certifies that the withon Order denying defts motion to dismiss on the ground of lack of subject matter jurisdiction involves a controlling question of law, etc. & an immediate appeal from the within Order may materially advance the ultimate termination of this litigation, which will otherwise require a protracted jury trial unrelated to the question of subject matter juridiction before this issue is finally resolved.....BRIEANT,J m/n	
7-18-75	Filed transcript of record of proceedings, dated December 3, 1975	
10-23-75	PRE-TRIAL CONFERENCE HELD BY Mag. Jacobs	
11-20-75	Filed table of contents of proposed pretrial order.....BRIEANT,J	
12-4-75	Filed Memo on behalf of Phillips Petro Co re: Designation of Issues to be tried and the Pltff's further discovery req. for certain Financial Statement.	
12-22-75	Filed Stip & Order re Confidential Documents.....Brieant,J.	
12-30-75	Filed Memorandum & Order #43641 re motion to strike Pltff's amended & supplemental allegation of damages in Count.....Brieant,J. mn.	
12-31-75	Filed Pltff's Memorandum of Law in Opposition to Deft's Motion for Partial Summary	
1-5-76	Filed Deft's Supplemental Trial Memo.	
1-5-76	Filed Pltff's Supplemental Trial Memo.	
1-20-76	Filed one manila envelope containing Court's exhibit 4 ordered impounded, sealed & placed in cashiers office. Brieant, J.	
1-22-76	Fld Trial Memo on behalf of Pltff.	
1-26-76	Fld Pltff's Proposed Special Interrogs for the Jury.	
1-26-76	Fld Deft's Porposed Special " " " "	
1-26-76	Fld Deft's Proposed Suppl to intstruction 30b & etc.	
1-26-76	Fld Pltff's Proposed Jury Charges.	
1-26-76	Fld Pltff's Suppl Jury Charges.	
1-26-76	Fld Deft's req. for jury charges.	

BEST COPY AVAILABLE

D

see page #4

	PROCEEDINGS	Date O Judgmer
Jan 5-76	Jury trial begun before Brieant, J.	
1-6-76	Trial cont'd	
1-7-[illegible]	[illegible]ial cont'd	
1-8-7[illegible]	[illegible]rial cont'd	
1-9-76	Trial cont'd	
1-12-76	Trial cont'd	
1-13-76	Trial cont'd	
1-14-76	Trial cont'd	
1-15-76	Trial cont'd	
1-16-76	Trial cont'd	
1-19-76	Trial cont'd	
1-20-76	Trial cont'd	
1-21-76	Trial cont'd	
1-22-76	Trial cont'd	
1-23-76	Trial cont'd	
1-26-76	Trial cont'd	
1-27-76	Trial cont'd & concluded. General verdict for Pltff. in the amount of $1.5 million See Special verdict. Submit judgment on notice.	
2-3-76	Fld Stip & Order that the settlemtn of proposed judgment is adj to 2-17-76 .....Brieant,J.	
2-17-76	Fld Deft's Proposed Findings of Facts and Conclusions of Law.	
2-17-76	Fld Deft's Memo of Law in support of Findings etc.	
2-17-76	Fld Deft's M tion for judgment Notwithstanding the Verdict....no ret date given.	
2-17-76	Filed transcript of record of proceedings, dated	
2-17-76	Filed transcript of [illegible] proceedings, dated	
2-17-76	[illegible]	
3-2-76	Fld Letter from Gold, Farrel & Marks by Farrell to Judgme Brieant dtd 3-2-76.	
3-2-76	Fld Findings of Fact & Conclustion of Law.....The Court alson finds and concludes: by reason of CPLR 5001, NY CPLR, pltff is entitlted to interest on the award of damages from 12-16-63 to the date of filing of Judgment at the Statutory rates in effect from time totime in the courts of the State of NY. as computed ~~xxxxxx~~ in the Judgment signed simulaneously herewith. State law supplies the rule of decision in this diversity action. and this Court lacks power to diminish the amt. of prejudgment interest for unconsciionalbility, or in the exercise of its inherent supervisory power over the administration of justice. Delay in bringing this casue to trial is not directly chargeabe to any pty...So Found as Above Stated. Brieant,J mn	
3-3-76	Fld Pltff's Memo in connection with judgment.	
3-2-76	Fld Judgment #76,174....Ordered that so much of the claim of pltt is based on the theory that a joint venture existed between it and deft is dismissed with prej... and that all caims of pltff for equitable relief are dismissed with prej. and so much of the claim of pltff as is based on the theory of a contract implied in law, quasi contract or unjust enrichment is dismissed with prej...and that pltff Prudential Oil Corp have judgment against deft Phillip Petroleum Co upon the verdict in the amount of $1,500,000.00 with interest as follows:(see judgment)..... ....Making a total of $2,690,968.70. together with costs tobe taxed..... .....Brieant,J. mn Judgment Entered 3-3-76-Clark ent 3-3-76..	
3-3-76	Fld Memorandum & Order#43992.....Deft's motion for judgment notwithstanding the verdict is denied....So Ordered....Brieant,J. mn	
3-15-76	Fld Deft's OSC for Order to amend the judg.....& with a Stay....ret 3-19-76-10:15AM-619	

Continued on page 5

E

595 Madison Avenue
New York, New York 10022

A-1e

PRUDENTIAL OIL VS PHILLIPS PETRO 67 C 3748 CLB

	PROCEEDINGS	Dt Jud
3-24-76	Fld Deft Phillips Petro. Co's Supersedeas Bond in the amount of $2,690,968.70 ...by Safeco Ins. Co of America...with Consent and Approved by Griesa,J 3-24-76.	
3-25-76	Fld Pltff's Memo in opposition tomotion to amend the judgment etc.	
3-26-76	Fld Memo End on bk of OSC fld 3-15-76....The motion is in all respects denied... ....Brieant,J. mn	
4-23-76	Fld Deft's Notice of Appeal to USCA from order ent 3-3-76....Notice mailed on 4-26-76 to:Gold, Farrell & Marks.	
5-2-76	Filed defendant's designation of exhibit to be transmitted to U.S.C.A.	
5-2-76	Filed stipulation designation of exhibits to be transmitted to U.S.C.A.	
5-2-76	Filed stipulation~~exhibit~~ designating copy of transcript of the deposition of Michael J. Shea as part of record on appeal/	
5-3-76	Filed transcript of record of proceeding dtd: Mar. 19-76.	

F

Complaint

A 2

United States District Court

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PRUDENTIAL OIL CORPORATION,
Plaintiff,

v.

PHILLIPS PETROLEUM COMPANY,
Defendant.

Civil Action
File No.....

COMPLAINT.

PALMER, SERLES, DELANEY & SHAW
Attorneys for Plaintiff
62 William Street,
New York, New York 10005.
(212) WH 3-3111

ROBERT F. CONRAD,
815 Connecticut Avenue, N. W.
Washington, D. C. 20006
Of Counsel
(202) 298-5535

A 2a

United States District Court

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PRUDENTIAL OIL CORPORATION,
Plaintiff,

v.

PHILLIPS PETROLEUM COMPANY,
Defendant.

Civil Action
File No.....

COMPLAINT.

Plaintiff, by its Attorneys, for its Complaint herein, alleges:

Jurisdiction.

1. Plaintiff, Prudential Oil Corporation, is a New York corporation, having its principal place of business at 1 Rockefeller Plaza, New York, New York. Plaintiff brings this action as assignee of all the right, title and interest to the claims asserted herein of Prudential Equities Corp., a Delaware corporation, which in turn was the successor in interest and assignee of the entire business, assets and properties of Prudential Oil Corporation, a Connecticut corporation. Unless otherwise stated, reference herein to "Prudential" shall be to the Connecticut corporation.

2. Defendant, Phillips Petroleum Company, is a Delaware corporation, having its principal place of business in Bartlesville, Oklahoma. It is sometimes hereinafter referred to as "Phillips".

3. The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.

For a First Claim for Relief.

4. In 1961, Rafael Durand, the Administrator of the Economic Development Administration ("E. D. A."), an agency of the government of the Commonwealth of Puerto Rico, requested Omega Management, Inc. ("Omega"), a management consulting service organization located at 230 Park Avenue, New York, New York, and its President, Mr. J. P. Coan ("Coan"), to undertake the preparation of an initial study with respect to the feasibility of establishing certain new refining and petrochemical manufacturing facilities in Puerto Rico.

5. This project was conceived as part of "Operation Bootstrap", and was the start of a program announced by E. D. A. to encourage the expansion of the petrochemical industry within the Commonwealth. Such program was proposed as a means to compensate for the lack of indigenous raw materials in Puerto Rico to support industrial growth, and to take advantage of the favorable geographic location of Puerto Rico in relation to the large oil resources of the Caribbean area, particularly Venezuela. The products of the petrochemical industry were looked upon as intermediate chemicals which ultimately would be used to produce a large variety of consumer products to be made from nylon, plastics, synthetic fibers, fertilizers, paints, synthetic rubber, and other petrochemical derivatives. In this manner, the new project would form the basis of new diverse industries and result in large scale employment needed in the Commonwealth.

6. At the time when the project was first conceived, there were already two refineries operating within the Commonwealth designed to produce normal refinery products, such as gasoline, kerosene, fuel oil, butane, and diesel oil, and which already were capable of meeting the Commonwealth's entire requirements for such products. Some steps had been taken to increase the production at these facilities and to convert part of their product to petrochemical raw materials which would be utilized as feed stock for petrochemical plants. It was hoped that the

success being achieved through these initial steps could be increased and accelerated by the creation of refinery and petrochemical facilities designed for the specific purpose of furnishing a base to support industrial operations.

7. In or about December, 1961, Omega submitted to E.D.A. a favorable preliminary feasibility study which showed that the proposed project, as Omega conceived it, was economically sound and would result in substantial and continuing benefits to the economy of Puerto Rico. After discussions with various representatives of E.D.A., the preliminary feasibility study was accepted by that agency and its support was committed to the proposed project.

8. It was immediately recognized, however, that the establishment of new refinery and petrochemical facilities might conflict with the express terms of the United States Oil Import Control Program established under Presidential Proclamation 3279 and the Oil Import Regulations of the United States Department of the Interior issued thereunder. Under this program no crude oil, unfinished oils, or finished refinery products produced outside the territorial limits of the United States could be imported except under a quota granted pursuant to an allocation made by the Oil Import Administration of the Department of the Interior. Accordingly, after consultation with and at the suggestion of Omega, representatives of the E.D.A. consulted with the Honorable Stewart L. Udall, Secretary of the Interior, and came away with the understanding that the Secretary was impressed with the contribution that the new facilities would make to the achievement of economic stability in Puerto Rico. These representatives reported to Omega that Secretary Udall would give careful consideration to an application for the allocation of an import quota to the new facilities when a specific project was presented. On this basis, it was determined to proceed with the project.

9. The initial responsibility for formulating the details of the project and arranging for its promotion was assumed by an initial venture group which included Mr. Bruce K.

Brown ("Brown"), who, as the retired President of Pan-American Southern Corporation and Vice President of Standard Oil Company (Indiana), was a business consultant to the petroleum and petrochemical fields, and the Honorable Oscar L. Chapman ("Chapman"), former United States Secretary of the Interior, and a practicing attorney in Washington, D. C.; and it was agreed that Omega would continue to provide management consulting service to the venture. The purpose of the venture was to promote the project and, through an operating corporation to be formed in Puerto Rico, *inter alia*, to arrange for the engineering design and construction of the refinery portion of the project, to arrange for corporations to erect the petrochemical facilities, to secure the necessary oil import quotas, rights, licenses and properties to engage in business and to provide for the necessary financing.

10. Brown, who was also a director of the Murphy Corporation, a large oil company that owned substantial crude oil reserves and naphtha stores in Venezuela, was able, without difficulty, to cause that corporation to become associated with the venture.

11. From the inception, Brown stated that the principal problem which had to be overcome in order for the venture to succeed was to secure the participation of a major chemical company or companies which would establish new petrochemical plants in Puerto Rico and become the purchasers of the petrochemical raw materials produced by the refinery. He stated that the application to the Oil Import Administration for an oil import quota would have to set forth not only the engineering and financing plans for the complete project, but would have to contain firm commitments from such chemical company purchasers to evidence the reality of the proposed petrochemical enterprise. On this basis he concluded that the expenditure of funds for the refinery portion of the project should be deferred until the participation of the petrochemical purchasers could be arranged. Accordingly, the promotion of the venture was carried forward along the dual lines

of (1) efforts to obtain chemical company participation; and (2) efforts to arrange for financial backing.

12. Among the companies that the venture group approached as possible participants in the venture to undertake firm commitments with respect to utilization of the petrochemical raw materials were Mobil Latin America, Inc., Monsanto Chemical Company, Hercules Powder Company as well as defendant Phillips. Although, on two separate occasions, Phillips reviewed and studied the proposal with a view towards participating in the supplying of management, technical assistance and product sale assistance, it rejected the opportunity to participate in the production, purchase or utilization of petrochemicals, and therefore declined to take any interest in the venture at that time.

13. In early June, 1962, Brown withdrew as an active participant in the promotion of the venture. Under date of June 4, 1962, he informed Chapman and Coan that effective July 1, 1962, he was joining the management of Murphy Corporation and would devote his full time to the affairs of that corporation. Coan and Chapman determined, however, that the experience and progress made by the venture should not be lost because of the withdrawal of Brown and sought to find a new person who would undertake the sponsorship of the venture, furnish the necessary promotional funds and carry on the work abandoned by Brown. In this regard, assistance was sought from the representatives of E. M. Warburg & Co. ("Warburg") and Kuhn, Loeb & Co. ("Kuhn-Loeb"), the two New York investment banking firms who had been working on the financing plans of the project.

14. A representative of Warburg suggested to Coan and Chapman that Prudential had the required technical experience, know-how and ability to guide the project to fruition, as well as the financial acumen to develop and carry out the financing plans. Thereafter, numerous meetings were held among Chapman, Coan and representatives

of Warburg and Kuhn-Loeb with representatives of Prudential, who included Mr. Nathan M. Shippee ("Shippee"), its Chairman of the Board, Mr. Edward J. Willey ("Willey"), its President, and Mr. T. R. Young ("Young"), its chemical engineering consultant. As a result of these meetings, it was agreed that Prudential would become the sponsor of the venture, make all organizational and contractual arrangements and advance the necessary funds until the project was confirmed. Prudential also agreed that Coan would continue to act as management consultant and that Chapman would continue as Washington representative and to serve as general counsel of the Puerto Rican company which would operate the project.

15. Prudential, principally through the activities of Shippee, Willey and Young, set out on the necessary work to find a new crude oil supplier to replace Murphy Corporation; to locate purchasers for the petrochemical raw materials; to arrange for further feasibility and engineering studies for the project; to prepare and prosecute the application for an import license; to arrange for the site location of the project facilities; to arrange for financing plans; and, in general, to do, perform and make contractual arrangements for all of the work, services and planning necessary for, and incident to, the financing, construction and operation of the project facilities.

16. As part of these activities Prudential entered into an arrangement with Phillips that Phillips would be the supplier of the crude oil to be used at the project and would purchase the refined petroleum products not used in petrochemical operations. Phillips also agreed to furnish consultation and assistance in the design, construction and operation of the project facilities. The participation of Phillips is confirmed by its commitments contained in the letter dated November 13, 1962, addressed to Prudential and signed by Phillips' President, Mr. Stanley Learned, a copy of which is annexed hereto as Exhibit A and made a part hereof for all purposes.

17. In light of the commitments undertaken by Phillips, as set forth in Exhibit A, Prudential accepted Phillips as a co-participant in the project, and did thereafter deliver to Phillips all of its existing material, ideas, plans and projections, and worked with, consulted and sought the advice of Phillips and its employees as a co-venturer and party-in-interest. The relationship as agreed to by both parties and thereafter carried out by Prudential was one of good faith and mutual confidence. A most important feature of the agreement was that each party would absolutely trust the other. Prudential has, at all times, fully complied with this requirement.

18. Dr. A. Dale Fischbeck, the manager in charge of Phillips' petrochemical plants development, was accepted as technical adviser to the venture and was included by Phillips as one of its members of the Prudential-Phillips team working on the development of the project. In his capacity as a member of such team, there was made available to Dr. Fischbeck and other persons in the Phillips organization working with him, all of the technical data, concepts, specifications, plans, designs, engineering studies, projections and information developed by Prudential with respect to the project. In the course of this work, Dr. Fischbeck and others in the Phillips organization participated in, advised and were consulted by Prudential with respect to most of the major matters and decisions incident to and connected with the carrying out of the venture and the plans for the establishment of the project. In addition, they were introduced to and became acquainted with many of the persons outside Prudential's organization who were working with Prudential on various aspects of the project including consultants, engineers, attorneys and government officials, whose experience and familiarity with the project was of prime importance to the success of the venture.

19. Within a short time after Prudential assumed sponsorship of the venture, Prudential came to the realization that the project in the form as then conceived was not workable. Prudential learned that there was no practical

opportunity to secure advance firm commitments for the purchase of the petrochemical raw materials in sufficient quantities to meet the output requirements of the refinery facilities, and it concluded that the establishment of hundreds of millions of dollars worth of petrochemical plants to consume such raw materials could not be committed for prior to the completion of the refinery facilities and could be planned for and installed only over a long period of time. Accordingly, Prudential developed a new concept under which the proposed project would be limited, in the first instance, to a "core" refinery which, though designed to produce the maximum yield of petrochemical raw materials to feed various "satellite" petrochemical plants, would be sufficiently viable to produce larger amounts of normal refinery products during the early years when the "satellite" and other consuming plants could be installed. As part of this concept it was to be the function of the venture, as a principal activity, to work with and assist E.D.A. over a period of at least ten years to attract new petrochemical and other consuming industries to the Commonwealth and to serve as a "quasi" public utility to serve such industries.

20. Prudential's new concept was presented to and discussed with representatives of E.D.A. at meetings held in Puerto Rico from November 28, 1962 to December 1, 1962. As a result of these meetings, an understanding was reached between Prudential and E.D.A. to the effect that the new concept would be submitted for study to an independent engineering consulting firm to be employed to represent the Commonwealth. In the event that the project proposed under the new concept received technical endorsement by such independent study, it was agreed that the Commonwealth would sponsor the project, would grant to the venture exclusivity for the chemical industry, would grant it tax and other protection, would lease it a plant site, and would supply complete development of a new industrial area in which the project was to be located exclusive of the direct project facilities. At later meetings and at the

initiative of Prudential, Arthur D. Little, Inc., a management consulting firm located in Cambridge, Massachusetts, was selected as the independent consultant to review the new project concept and thereafter the approval of such firm was given to the Commonwealth.

21. On the basis of the new concept, Prudential went forward with the activities of the venture in all of its many aspects. A principal part of the work consisted of the preparation by Prudential of the application for an allocation of oil imports to be used at the project facilities. This application was to incorporate most of the details of the project developed by the venture and by the engineering, advisory and investment banking firms acting on its behalf or in association with it, and constituted, in effect, a project outline. As part of its activities as a participant in the venture, Phillips undertook to cause a comprehensive marketing study to be conducted, which study was intended to be incorporated in the project outline. At a meeting held on March 27, 1963, among Shippee, Young, Dr. Fischbeck, and Messrs. Frank Page and Al Smith, employees of Phillips, and called for the purpose of reviewing the results of the marketing study, Dr. Fischbeck requested that Phillips be furnished with the draft of the project outline, as developed to that date, so that its marketing and engineering divisions could bring it up-to-date with current price and cost data. Prudential intended that its project outline would then be submitted on its behalf by Chapman to the Department of the Interior as the application for an allocation of an oil import quota for the project.

22. On April 29, 1963, Dr. Fischbeck wrote to Shippee as follows:

> "Following our meeting of March 27, the proposal outlined was brought to the attention of Phillips' management for consideration. It was decided that any detailed studies on the part of Phillips would be premature at this time, and that our further interest in the project will depend upon the prior establishment of an import quota. I understand Mr. Chap-

man has been advised by our management of the Phillips' position."

23. Notwithstanding the failure of Phillips to complete the marketing study, Phillips and Prudential continued jointly to carry the project forward and Dr. Fischbeck and other employees of Phillips were kept apprised of current developments. In May, 1963, Shippee submitted to Mr. Richard Holland, an employee of Phillips a complete, current working copy of the project outline for the purpose of having this material prepared in final form and reproduced; and on May 29, 1963, three finished copies were submitted to Chapman for presentation to the Department of the Interior. It was decided, however, to delay the presentation of the application pending further efforts to obtain certain marketing and engineering data from Phillips.

24. On July 2, 1963, a meeting was held among Chapman, Coan, Young, Shippee and other representatives of Prudental, at which the necessity to obtain fuller cooperation from Phillips was discussed. Particular attention was directed to the provisions of Section 21(b)(2) of the Oil Import Regulation No. 1 requiring that the application for an allocation of an oil import quota be filed, even in special circumstances, only in the name of a person having an importing history, such as Phillips. It was also agreed that Chapman would undertake to "quarterback the project in Washington" and would continue the efforts to obtain the full support of Phillips and to push for a revision of the Oil Import Regulations specifically to permit the granting of an allocation for an import quota for the project and eliminate the requirement that the applicant have an importing history. Also certain agreements were reached under which Prudential would allocate to Chapman and Coan certain shares of the Puerto Rican company to be organized for the purpose of operating the project.

25. On December 27, 1963, revision 4 to the Oil Import Regulation No. 1 was promulgated, but such revised Regulation did not amend the requirements for importation of oils

into Puerto Rico or establish an allocation for the project. Thereupon, under date of January 15, 1964, a "Petition for Allocation of Unfinished Oil—Puerto Rico" under the designation "In the Matter of Phillips Petroleum Co., Petitioner" and signed "Oscar L. Chapman", was filed with the Oil Import Appeals Board, pursuant to the provisions of the aforesaid Section 21(b)(2) of the Oil Import Regulation No. 1. Thereafter, Chapman filed with the Oil Import Appeals Board various briefs and memoranda in support of the Petition and a public hearing was held thereon in Washington, D. C., on July 31, 1964.

26. During this period, representatives of Prudential consulted with and reported to representatives of Phillips on matters relating to the project and in support of the pending Petition. Prudential and its associates in the venture assisted Phillips in preparing materials for such public hearings and in connection with documents, memoranda, briefs, statements and other matters relating thereto. In particular, they assisted in procuring the full support of the E.D.A. and in causing its Administrator, Mr. Rafael Durand, to testify in favor of the project. During the course of such testimony, Mr. Durand stated that the project covered by the Phillips Petition was:

> ".... the result of three years of effort and negotiation in which our government sought to interest elements of the petroleum and chemical industries in establishing in Puerto Rico the core of a petrochemical effort."

27. The only persons, other than Mr. Durand, who appeared at the hearing and testified in favor of the granting of the Petition were representatives of Phillips. Representatives of many oil companies, including those already operating facilities in Puerto Rico, testified in opposition. No representative of Prudential, nor any of the persons acting in association with it, testified at the hearing.

28. Under date of May 14, 1965, the Department of the Interior announced that on the basis of a binding arrangement to be entered into between Phillips and the Commonwealth for the development of petrochemical producing and processing facilities in Puerto Rico, the Department would recommend changes in the oil import control program to permit the importation of feed stocks for the project facilities.

29. On May 27, 1965, an agreement was entered into between Phillips and E.D.A., on behalf of the Commonwealth, relating to the formation of a corporation to be known as "Phillips Puerto Rico Core Company" ("Core"), and to be jointly owned (75% by Phillips and 25% by the Puerto Rico Industrial Development Company). It was agreed that Core would construct, own and operate, under special license and grants received from the Commonwealth, a complex of refinery facilities designed to synthesize and separate selected groups of hydrocarbons from petroleum naphtha. It was proposed that the imported light naphtha (Venezuelan supply) would be converted into certain limited number of petrochemical raw materials and, to a large degree, into motor gasoline, but that the utilization of the facilities for the production of petrochemical raw materials would be increased as rapidly as justified economically.

30. Under date of December 24, 1965, Section 15 of the Oil Import Regulation No. 1 was further amended, in substance, to authorize allocation of crude oil and unfinished oils to persons proposing to construct refinery facilities in Puerto Rico which would promote substantial expansion of employment through industrial development in instances where the Secretary of the Interior determines that the accomplishment of the objectives of the Presidential Proclamation 3279 would not be impaired. On the same day, the Secretary of the Interior announced the allocation of an import quota to Core permitting the importation of 50,000 barrels per day of low boiling distillates (naphtha)

into Puerto Rico, effective January 1, 1966, for use pursuant to the aforesaid agreement of May 27, 1965.

31. Phillips, through Core, has undertaken the design, construction and operation of the refinery facilities at a newly created industrial district, located approximately three miles southwest of the City of Guayama on land leased from the Commonwealth. It is contemplated that such refinery facilities will start up operation in September, 1967. In addition, Phillips has entered into a joint venture for the construction of a nylon fiber plant adjacent to the Core facilities, construction of which began in June, 1966, and which is scheduled to start up operation in November, 1967. Under present plans, projections are being made to attract other chemical and petrochemical plants to be established adjacent to, and to be supplied with raw materials from, the Core facilities at an installed cost estimated to be in excess of $600,000,000 over a ten-year period, which plants will ultimately provide raw materials for consumer product industries, such as, synthetic textiles, plastics, synthetic rubber goods and a variety of agricultural chemicals and fertilizers.

32. Since the allocation of the aforesaid import quota, Phillips has refused to acknowledge that Prudential and its predecessors in interest have any interest, direct or indirect, in the project or in any of the facilities being constructed in the Commonwealth of Puerto Rico.

33. The petrochemical complex being built by Core and sponsored by Phillips constitutes the successful consummation of the venture as conceived and initiated by Prudential.

34. Pursuant to the acts, representations and agreements between Prudential and Phillips, a joint venture was formed between the parties pursuant to which Prudential was to acquire, upon successful consummation of the venture, the equity interest in the company to be organized to construct and operate the project facilities and Phillips was to receive the right to supply, from its available sources, the crude or unfinished oils to be processed at the project

and the right to purchase all of the products of the refinery with the exception of the petrochemical raw materials. During the course of the joint venture, and pursuant thereto, Prudential and its representatives disclosed to Phillips and its representatives all of the details, specifications, ideas, concepts, innovations, information, contacts, engineering data and designs which made it possible for the project to be successfully completed. Phillips has misappropriated and wrongfully excluded Prudential from the fruits of the venture obtained by their joint efforts and from the valuable business, properties, interests, rights and assets obtained by reason thereof.

35. Although heretofore duly demanded, Phillips has failed and refused and still fails and refuses to account to Prudential for the fruits of the joint venture and to pay over to Prudential the business properties, interests and rights acquired by Phillips in its own name but for the account of the joint venture, including, but not limited to, the equity interest held by Phillips in Core, which rightfully and in equity belong to Prudential.

36. By reason of the foregoing, Phillips has breached its agreement and its duty of trust and fair dealing to Prudential and holds the fruits and benefits of the venture, including the equity interest in Core, for the right and benefit of Prudential.

37. The principal asset of Core and Phillips derived through the efforts of Prudential is the quota to import into the United States 50,000 barrels a day of light naphtha. The allocation of an oil import quota is a unique property right. No oil import quota may be granted without the consent and approval of the Department of the Interior upon a proper showing, as set forth in the Oil Import Regulations. With the granting of each oil import quota, the opportunity to obtain another allocation is more remote. In this instance, with the creation of a new industry in Puerto Rico requiring time and a competitive climate for growth, any reasonable probability of Prudential's obtain-

ing another quota upon a new application is so infinitesimal as to be, for all practical purposes, nonexistent. Accordingly, the only manner in which plaintiff can be made whole is by the performance by Phillips of its legal obligations.

38. Since each barrel of light naphtha is the equivalent in low boiling ingredients of three to four barrels of crude petroleum, and since imported light naphtha is considerably cheaper than the comparable domestic product, the quota represents an economic advantage to a domestic marketer amounting to approximately two dollars a barrel. During the ten-year period of the initial term of the allocation granted by the Department of the Interior to Core, the import quota has a value of $365,000,000. Based on the long range outlook for world energy resources, there presently exists the reasonable expectancy that this allocation will be renewed, again and again, for successive ten-year periods. Assuming, conservatively, that only two such renewals are to be received by Core, the value of the import quota over a thirty-year period is $1,095,000,000.

39. Prudential has no adequate remedy at law.

For a Second Claim for Relief.

40. Prudential repeats and realleges Paragraphs "1" through "33," inclusive, and Paragraphs "37" through "39," inclusive, of this complaint, as though set forth in full in this Second Claim.

41. Pursuant to the acts, representations and agreements between Prudential and Phillips, Prudential and its representatives disclosed to Phillips and its representatives all of the details, specifications, ideas, concepts, innovations, information contacts, engineering data and designs in trust and confidence to be used solely for the benefit and in furtherance of the interests of Prudential, and Phillips thereafter did misappropriate the same for its own use and benefit, and did thereby inflict upon Pruden-

tial and upon its valuable business properties, interests, rights and assets the wilful, intentional and malicious injuries and harm hereinabove set forth.

For a Third Claim for Relief.

42. Prudential repeats and realleges Paragraphs "1" through "33," inclusive, and Paragraphs "37" through "39," inclusive, of this complaint, as though set forth in full in this Third Claim.

43. Phillips intended by its acts, statements and representations falsely to convince Prudential that Phillips had a continuing interest by participating with Prudential in the project and the sharing of the benefits thereof while concealing from Prudential its true intention to misappropriate to itself the full benefits of the project and all of the business properties, interests, rights and assets accruing therefrom, and to exclude Prudential therefrom. Phillips' purpose was to induce Prudential: (a) to disclose and deliver to Phillips the confidential details, specifications, ideas, concepts, innovations, information, contacts, engineering data and designs pertaining to the installation, operation, management and financing of the project, and (b) to cooperate with Phillips in obtaining the necessary rights, licenses, permits, quotas, privileges, leases and other grants necessary to the consummation of the project in Phillips' name, and (c) to cause Prudential to refrain from seeking any such grants or establishing any such business solely in its own behalf.

44. Prudential would not have revealed such confidential matters to Phillips nor cooperated with it in obtaining the rights, licenses, benefits and other grants which it obtained but for Phillips' deceitful conduct as aforesaid.

45. By reason of the foregoing, Phillips, in equity, holds the fruits and benefits of the project, and all of its interests therein, on a constructive trust for the benefit of Prudential.

For a Fourth Claim for Relief.

46. Prudential repeats and realleges Paragraphs "1" through "33," inclusive, and Paragraphs "37" through "39," inclusive, of this complaint, as though set forth in full in this Fourth Claim.

47. Prudential and the persons affiliated with it refrained from taking any action which would have interfered with or in any way could have been detrimental to the action being taken by Phillips to secure any of the rights, licenses, permits, quotas, privileges, leases and other grants necessary to be obtained by it for the establishment of the business and interests in the project.

48. The forebearance of Prudential was caused directly by the acts, representations and agreements of Phillips, which creates as a fact of equity the right of Prudential to share in the fruits and benefits accruing therefrom.

WHEREFORE, Plaintiff demands judgment as follows:

1. That an accounting be had between plaintiff and defendant Phillips as to the transactions had in joint venture hereinabove alleged and that a division be made of the respective rights and interests of the parties in said joint venture in accordance with their agreements and understandings.

2. That upon completion of such accounting, judgment be entered directing Phillips to pay over to plaintiff all business rights, properties, interests and assets, and particularly, but not limited to, the equity interest in Core, which Phillips holds in its name but for the account and benefit of Prudential.

3. That judgment be entered directing Phillips to account for and pay over to plaintiff all business rights, properties, interests and assets which it holds in its name but for the account and as trustee, constructive or otherwise, for Prudential.

4. That judgment be entered against Phillips awarding to plaintiff recovery of all losses, damages, costs and expenses sustained on account of the claims set forth in the First, Second, Third and Fourth Claims herein, together with interest and reasonable attorneys' fees and costs and disbursements of this action, and

5. That plaintiff be awarded such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September , 1967

PALMER, SERLES, DELANEY & SHAW
By William C. Palmer, a Partner
Attorneys for Plaintiff
62 William Street,
New York, New York 10005.

ROBERT F. CONRAD,
815 Connecticut Avenue, N. W.
Washington, D. C. 20006
Of Counsel

EXHIBIT A

PHILLIPS PETROLEUM COMPANY

BARTLESVILLE, OKLAHOMA

November 13, 1962

STANLEY LEARNED
PRESIDENT

PRUDENTIAL OIL CORPORATION
21 West Putnam
Greenwich, Connecticut

Attn: Mr. N. M. Shippee, Chairman

Gentlemen:

In connection with the Puerto Rico Oil and Petrochemical Company's petrochemical complex to be built in Puerto Rico, Phillips Petroleum Company is prepared to:

1—Furnish 30,000 to 60,000 barrels per day of crude oil for charge stock;

2—Purchase the refined petroleum products not consumed in the petrochemical operations;

3—Counsel with you and assist, if you wish, in the design and construction and operation of the proposed facilities.

Whenever you desire, we shall be glad to have our representative work with you to negotiate and complete contracts.

Very truly yours,

STANLEY LEARNED

Answer of Defendant

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK A 21

- x

PRUDENTIAL OIL CORPORATION, :

Plaintiff, :

-against- :

PHILLIPS PETROLEUM COMPANY, :

Defendant. :

- x

67 Civ. 3748

ANSWER

Defendant, by its attorneys, for its Answer to the Complaint alleges:

1. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 1 of the Complaint.

2. Defendant admits the allegations of Paragraph 2 of the Complaint.

3. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 3 of the Complaint.

4. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 4 of the Complaint.

5. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 5 of the Complaint.

6. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 6 of the Complaint, except admits that there were at least two petroleum refineries operating in Puerto Rico in 1961.

7. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 7 of the Complaint.

8. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 8 of the Complaint, except admits that an oil import control program was established by the United States under Presidential Proclamation 3279 (24 Fed. Register p. 1781, March 12, 1959) and the Oil Import Regulations of the United States Department of the Interior issued pursuant to that Proclamation (32A CFR Ch. X, OI Reg. 1) and respectfully refers to such official records for a description of the provisions and procedures of such program.

9. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 9 of the Complaint.

10. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 10 of the Complaint.

11. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 11 of the Complaint.

12. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 12 of the Complaint, except admits that J. P. Coan and Bruce K. Brown during the first six months of 1962 discussed with representatives of defendant the possible establishment of a refinery-petrochemical complex in Puerto Rico and that defendant informed Mr. Coan and Mr. Brown that defendant had no interest in pursuing the matter further at that time with Mr. Coan or Mr. Brown.

13. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 13 of the Complaint.

14. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 14 of the Complaint.

15. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 15 of the Complaint.

16. Defendant denies the allegations of Paragraph 16 of the Complaint, except admits that Exhibit A annexed to the Complaint is a correct copy of a letter dated November 13, 1962 addressed to Prudential Oil Corporation from defendant and refers to the text of such letter for an accurate statement of its content.

17. Defendant denies the allegations of Paragraph 17 of the Complaint.

18. Defendant denies the allegations of Paragraph 18 of the Complaint.

19. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 19 of the Complaint, except denies that the concept of a "core" refinery was either a new concept or a concept developed by plaintiff or by plaintiff's alleged assignors.

20. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 20 of the Complaint.

21. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 21, except denies that it undertook to cause a

comprehensive marketing study to be conducted or that it undertook any activities as a participant in any venture to which the plaintiff or its alleged assignors were parties or that it was associated in any manner with any venture to which the plaintiff or its alleged assignors were parties, and further denies that defendant assumed any obligation to perform any function as to any materials left with it by N. M. Shippee or Thomas Young in March 1963.

22. Defendant admits the allegations of Paragraph 22 of the Complaint.

23. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 23 of the Complaint, except denies that defendant participated jointly in carrying forward any project or venture to which plaintiff or its alleged assignors were parties and further denies that defendant undertook to take any action with respect to any materials left by N. M. Shippee with defendant in May 1963.

24. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 24 of the Complaint.

25. Defendant admits that on December 27, 1963 Revision 4 to the Oil Import Regulation No. 1 was promulgated (32A CFR Ch. X, OI Reg. 1) and respectfully refers to the official text of said revision for a full and complete statement of its contents; defendant further admits that a public hearing was held in Washington, D.C. on July 31, 1964 before the United States Department of the Interior, Office of Oil and Gas, in the matter entitled "Oil Imports from Puerto Rico" and respectfully refers to the official file in that matter for a full and accurate

description of the papers filed and proceedings held in connection with that matter.

26. Defendant denies the allegations of Paragraph 26 of the Complaint, except admits that Mr. Rafael Durand testified on July 31, 1964 before the United States Department of the Interior, Office of Oil and Gas, in the matter entitled "Oil Imports from Puerto Rico" and for a full and accurate statement of his testimony respectfully refers to the official transcript of those proceedings.

27. Defendant admits the allegations of Paragraph 27 of the Complaint.

28. Defendant denies the allegations of Paragraph 28 of the Complaint, except admits that under date of May 14, 1965 the Department of the Interior announced that on the basis of a binding arrangement to be entered into between defendant and the Commonwealth of Puerto Rico for the development and construction of a petrochemical complex the Department would recommend changes in the oil import control program to permit the importation of feed stocks for the facilities to be constructed pursuant to such arrangement.

29. Defendant admits the allegations of Paragraph 29 of the Complaint with respect to the execution of an agreement between defendant and the Commonwealth of Puerto Rico dated May 27, 1965 and respectfully refers to the agreement for a full and accurate statement of the terms of the agreement.

30. Defendant denies the allegations of Paragraph 30 of the Complaint, except admits that Section 15 of the Oil Import Regulation No. 1 was amended as of December 24, 1965 (32A CFR Ch. X, OI Reg. 1, § 15) and

respectfully refers to the text of the amendment for a full and accurate statement thereof.

31. Defendant denies the allegations of Paragraph 31 of the Complaint, except admits that Phillips Puerto Rico Core Inc. has undertaken the design, construction and operation of petrochemical facilities at a newly created industrial district, located approximately three miles southwest of the city of Guayama on land leased from the Commonwealth and that defendant has a stock interest in a corporation which began in June 1966 the construction of a nylon fiber plant adjacent to the petrochemical facilities.

32. Defendant denies the allegations of Paragraph 32 of the Complaint, except admits and avers that at all times it has refused to acknowledge that plaintiff or its alleged ass'gnors have any interest, direct or indirect, in the petrochemical facilities of Phillips Puerto Rico Core Inc. and that at no time has plaintiff or its alleged assignors had nor do they now have any interest in any project or any facilities constructed or to be constructed by Phillips Puerto Rico Core Inc. in the Commonwealth of Puerto Rico.

33. Defendant denies the allegations of Paragraph 33 of the Complaint.

34. Defendant denies the allegations of Paragraph 34 of the Complaint.

35. Defendant denies the allegations of Paragraph 35 of the Complaint, except admits and avers that defendant has refused and still refuses to account or pay to plaintiff or its alleged assignors any business properties, interests and rights acquired by defendant and

denies that defendant associated in any manner with any venture to which plaintiff or its alleged assignors were parties, or that defendant acquired any properties, interests or rights in its name for the account of any joint venture to which plaintiff or its alleged assignors are parties or that plaintiff or its alleged assignors have any interest whatsoever in any properties, interests or rights held by defendant.

36. Defendant denies the allegations of Paragraph 36 of the Complaint.

37. Defendant denies the allegations of Paragraph 37 of the Complaint, except admits that no oil import quota may be granted without the approval of the Department of the Interior pursuant to the Oil Import Regulations and denies knowledge or information sufficient to form a belief as to the probability of plaintiff or its alleged assignors obtaining an oil import quota.

38. Defendant denies the allegations of Paragraph 38 of the Complaint.

39. Defendant denies the allegations of Paragraph 39 of the Complaint and avers that plaintiff has no cause of action against defendant.

40. Defendant repeats the allegations of Paragraphs 1 through 33, inclusive, and Paragraphs 37 through 39, inclusive, of the Answer in response to Paragraph 40 of the Complaint.

41. Defendant denies the allegations of Paragraph 41 of the Complaint.

42. Defendant repeats the allegations of Paragraphs 1 through 33, inclusive, and Paragraphs 37 through 39, inclusive, of the Answer in response to Paragraph 42 of the Complaint.

43. Defendant denies the allegations of Paragraph 43 of the Complaint.

44. Defendant denies the allegations of Paragraph 44 of the Complaint.

45. Defendant denies the allegations of Paragraph 45 of the Complaint.

46. Defendant repeats the allegations of Paragraphs 1 through 33, inclusive, and Paragraphs 37 through 39, inclusive, of the Answer in response to Paragraph 46 of the Complaint.

47. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 47 of the Complaint.

48. Defendant denies the allegations of Paragraph 48 of the Complaint.

AS A FIRST DEFENSE

The Complaint fails to state a claim against defendant on which relief can be granted.

AS A SECOND DEFENSE

The Court has no jurisdiction over the subject matter of the action pursuant to 28 U.S.C. § 1359.

AS A THIRD DEFENSE

Plaintiff is not entitled to maintain this suit by reason of laches. Plaintiff commenced this action an unreasonable length of time after it or its alleged assignors acquired notice of material facts giving rise to its complaint and the prosecution of this action at this time causes great injury and prejudice to defendant.

WHEREFORE, plaintiff demands judgment dismissing the Complaint and for costs and disbursements in the action.

SULLIVAN & CROMWELL

By _____
(A Member of the Firm)

Attorneys for Defendant
Phillips Petroleum Company,
48 Wall Street,
New York, N.Y. 10005.

HAnover 2-3100

Dated: October 19, 1967

Stipulated Facts

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

PRUDENTIAL OIL CORPORATION, :

Plaintiff, :

-against- : 67 Civ. 3748 (CLB)

PHILLIPS PETROLEUM COMPANY, :

Defendant. :

- x

STIPULATED FACTS

		Page
A.	The Parties	1
B.	Assignment of Claims	3
C.	The Interest of EDA in Promoting Industries and a Third Refinery	9
D.	Petroleum, Its Basic and Intermediate Processing, Its Products, and the Associated Industrial Activities (Set Forth in Separate Document).	
E.	The Activities of the Gibbs Group and Related Developments Pertaining to a Third Refinery in Puerto Rico . . .	10
F.	The Activities of Brown in Conjunction with Chapman and Coan Pertaining to a Refinery in Puerto Rico	14
G.	The Efforts of Chapman and Coan to Develop Sponsorship for a Refinery in Puerto Rico during the Summer and Fall of 1962	17
H.	Some Developments During 1963	17
I.	Phillips' Submission to EDA of a Proposal for a Project in Puerto Rico . .	18
J.	Submissions to the Interior Department by EDA and Phillips: January - June 1964	20

Page

K. The Hearing in July 1964 Before the Oil Import Appeals Board on the Phillips' Application and the Supplementary Submissions 21

L. The Initial Determination of the Secretary of the Interior in February 1965 and the Negotiation of the Agreement between Phillips and EDA 23

M. The Continuing Opposition and the Amendment in December 1965 of the Oil Import Proclamation 26

N. Events in 1966 and 1967 29

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

PRUDENTIAL OIL CORPORATION, :

Plaintiff, :

-against- : 67 Civ. 3748 (CLB)

PHILLIPS PETROLEUM COMPANY, :

Defendant. :

- -x

STIPULATED FACTS

A. The Parties

(1) Prudential Connecticut was organized on October 30, 1959, under the laws of the State of Connecticut and its certificate of organization was filed November 12, 1959. Until October 1, 1962 its principal place of business was in Greenwich, Connecticut, when it opened an office in New York City which was thereafter its principal place of business.

(2) Prudential Delaware was organized on March 1, 1965, under the laws of the State of Delaware. On May 26, 1965 the stockholders of Prudential Delaware voted to acquire all property and assets and liabilities of Prudential Connecticut in a share-for-share exchange of stock effective as of June 30, 1965.

(3) On May 26, 1965 the stockholders of Prudential Connecticut voted to reorganize as Prudential Delaware, to dissolve Prudential Connecticut as of June 30, 1965 and to transfer the entire assets, liabilities and good will of Prudential Connecticut to Prudential Delaware as of June 30, 1965, and that each shareholder of Prudential Connecticut should

receive one share of stock in Prudential Delaware for each share held in Prudential Connecticut.

(4) A certificate of dissolution of Prudential Connecticut was filed on November 12, 1965.

(5) Prudential Drilling Funds, Inc. ("Prudential Funds") was incorporated in Delaware on December 21, 1965. Its name was changed to Prudential Funds, Inc. on August 5, 1966.

(6) On July 13, 1966 the shareholders of Prudential Delaware voted to change its name from "Prudential Oil Corporation" to "Prudential Equities Corp." and the minutes of the shareholders meeting recite that the change was "to reflect more accurately the business of the corporation." This change was duly effected on July 15, 1966. On June 2, 1969 the name of Prudential Delaware was further changed to "Prudential Resources Corp."

(7) Plaintiff Prudential Oil Corporation ("Prudential New York") is a New York corporation which was incorporated on July 12, 1966.

(8) Defendant Phillips Petroleum Company ("Phillips") is a Delaware corporation with its principal place of business in Bartlesville, Oklahoma. At all times the business of Phillips was that of an integrated petroleum enterprise engaged in every phase of the petroleum industry and in various petrochemical activities, including exploration for and production of crude oil, natural gas and natural gas liquids; transportation of crude oil from wellhead to refinery; refining and processing of crude oil and unfinished oils into a broad range of by-products, including

gasoline, aviation fuel, petrochemical intermediates, and petrochemicals; and the transportation and marketing of refined products and petrochemicals.

B. Assignment of Claims

(9) As of June 30, 1965 a general indenture of conveyance, assignment and transfer of property and assets from Prudential Connecticut to Prudential Delaware, without specification of specific property and assets, was executed by Prudential Connecticut. Also as of June 30, 1965 an indenture of assumption of liabilities taken over by Prudential Delaware from Prudential Connecticut, without specification of specific liabilities, was executed by Prudential Delaware.

(10) On June 29, 1966, the board of directors of Prudential Delaware took the following action:

(a) approved and authorized the transfer by Prudential Delaware to Prudential Funds of all of Prudential Delaware's assets relating to its business in the management of oil and gas drilling funds, including its fiscal agency for "the Prudential Drilling Funds" in exchange for all of the issued and outstanding stock of Prudential Funds and the assumption by Prudential Funds of certain liabilities of Prudential Delaware with Prudential Delaware "retaining to itself, all of the right, title and interest of [Prudential Delaware] in and to any business unrelated to the management of oil and gas drilling funds". The business of Prudential

Funds consists of publicly offering unit participations in and administering oil and gas exploration and development programs known as the "Prudential Drilling Fund Programs", which provide facilities for co-ownership and participation by individuals in high income tax brackets in oil and gas drilling ventures.

(b) voted to change the name of Prudential Delaware to Prudential Equities Corp.

(c) authorized the transfer to Prudential New York, in exchange for all the capital stock of Prudential New York, of "all obligations, rights and claims of the Corporation with respect to the joint venture, and with respect to the promotion, financing and development of petrochemical companies related to or associated with the joint venture with Phillips Petroleum Co. and, upon the effectiveness of the aforementioned change of name of the Corporation, the use of the name of the Corporation, Prudential Oil Corporation".

(d) authorized and directed the officers of Prudential Delaware to form a new subsidiary under the name of Prudential Oil Corporation under the laws of the State of New York.

(11) On July 13, 1966 Nathan M. Shippee as the incorporator of Prudential New York elected himself and Patricia R. Morel as the directors of Prudential New York until the first annual meeting of shareholders, or until their successors were elected and qualified. On the same day the directors of Pruden-

tial New York elected the following officers of the corporation: Nathan M. Shippee - President and Treasurer; Patricia R. Morel - Vice President and Secretary.

(12) On July 13, 1966, the directors of Prudential New York voted to "acquire all the rights and claims of Prudential Oil Corporation, a Delaware corporation, with respect to the joint venture with Phillips Petroleum Company, and with respect to the promotion, financing and development of petrochemical companies relating to or associated with the joint venture with Phillips Petroleum Company, together with the use of the name of Prudential Oil Corporation, in exchange for 20,000 shares of Common Stock, par value $1 per share, of the Corporation and the assumption by the Corporation of any obligations of Prudential Oil Company [sic], a Delaware corporation, of any obligations with respect to said joint venture, the same to be effective as of the close of business on July 13, 1966" and voted that "the proper officers of this Corporation be, and they hereby are, authorized and directed to issue to Prudential Oil Corporation, a Delaware corporation, (name being changed to Prudential Equities Corp.) certificates evidencing 20,000 shares of fully paid and non-assessable shares of Common Stock of the Corporation upon delivery of the aforementioned consideration to this Corporation" and that "the aforementioned consideration to be received by the Corporation in exchange for the 20,000 shares of

Common Stock, par value $1 per share, of this Corporation be, and the same hereby is, adjudged and declared to be of a value of at least $20,000, and to be necessary for the business and in the best interests of this Corporation".

(13) On July 13, 1966, Nathan M. Shippee on behalf of Prudential Delaware executed a general indenture of conveyance, assignment and transfer to Prudential New York, which states that Prudential Delaware was transferring "the name 'Prudential Oil Corporation' and the use of said name, and the right, title and interest of the Grantor Prudential Delaware in and to the joint venture with Phillips Petroleum Company in respect of the project for a petrochemical complex in Puerto Rico, including all business properties and interests in connection therewith, including, without limitation, the promotion, financing and development of petrochemical companies relating to or associated with the joint venture with Phillips Petroleum Company, and any and all claims, rights or causes of action accruing or arising from any or all of the foregoing." Also on July 13, 1966, Nathan M. Shippee on behalf of Prudential New York executed an indenture of assumption of liabilities from Prudential Delaware which recited that Prudential New York would "assume payment of any and all liabilities and performance of any and all obligations of Prudential Delaware accrued to or existing at the date hereof, of whatsoever nature or character, whether absolute or

contingent, arising out of or in connection with the said joint venture with Phillips Petroleum Company in respect of a project for a petrochemical complex in Puerto Rico, including, without limitation, the promotion, financing and development of petrochemical companies relating to or associated with the said joint venture with Phillips Petroleum Company."

(14) On October 3, 1966, the Board of Directors of Prudential Delaware (whose name had been changed to Prudential Equities Corp.) authorized and directed the proper officers of Prudential Delaware, at such time as they deemed it advisable and in the best interests of Prudential Delaware, to commence a legal proceeding against Phillips by and in the name of Prudential New York and to take such further action, including retaining counsel, and executing and delivering all such further instruments as they deemed necessary, proper or convenient. On September 11, 1967 the Executive Committee of Prudential Delaware adopted a resolution that the proper officers of Prudential New York, acting for that corporation, are authorized and directed to take all steps necessary or advisable in the best interests of Prudential Delaware and Prudential New York to commence suit against Phillips, including the retention of all counsel deemed necessary by the proper officers of Prudential New York "in order to recover the property rights of [Prudential New York] in and to the petrochemical complex in Puerto Rico, presently

administered by Phillips Petroleum Company" and adopted a further resolution ratifying and confirming "the retention of the law firm of Robert Conrad, Esq. of Washington, D.C. and Palmer, Searles, Delaney & Shaw of New York City by [Prudential New York] to work with the office of Burton M. Abrams, counsel for [Prudential Delaware], for the purpose of commencing the said suit against Phillips Petroleum Company."

C. The Interest of EDA in Promoting Industries and a Third Refinery

(15) In 1942 the Puerto Rican Government commenced a program known as "Operation Bootstrap" to encourage industrial and commercial development in Puerto Rico with the objective of creating job opportunities on the Island. Since its establishment in 1950, the Economic Development Administration ("EDA") has administered this program.

(16) As of March 1961, when Rafael Durand succeeded Teodoro Moscoso as Administrator of EDA, there were two existing oil refineries in Puerto Rico which had been constructed during the early 1950's as a part of "Operation Bootstrap".

(17) During the first half of 1961 the officials of EDA prepared to encourage the location in Puerto Rico of a refining and petrochemical facility and thus encourage the expansion of the petrochemical industry of Puerto Rico. Such program was conceived as part of "Operation Bootstrap" to compensate for the lack of indigenous raw materials in Puerto Rico

necessary to support industrial growth. The products of such a facility were looked upon as intermediate products which ultimately would be used to produce a large variety of consumer products, thus forming the basis of new diverse industries and resulting in substantially increased employment in Puerto Rico. A 40

D. Petroleum, Its Basic and Intermediate Processing, Its Products, and the Associated Industrial Acticities

(Pars. 18-22 are set forth in a separate document)

E. The Activities of the Gibbs Group and Related Developments Pertaining to a Third Refinery in Puerto Rico

(23) In the spring of 1961, John H. Gibbs sent a letter proposal regarding a third refinery in Puerto Rico dated March 30, 1961 to Mr. J. Diaz Hernandez, executive director for the continental branch of EDA, which letter has been marked ~~at pretrial proceedings as Defendant's Exhibit 432-A for identification.~~ as Joint Exhibit J-1.

(24) EDA in June 1961 and thereafter undertook a program of actively encouraging potential sponsors of a third refinery to build such a project in Puerto Rico. Over the course of the next four years, EDA had discussions with various potential sponsors of such a project including Petroquimica Puertorriquena, Inc. ("PPI", a company organized by John H. Gibbs), Jules Flescher (Ferma Corporation), John C. Worthy (President of Pipeline Welding & Construction Company) and Albert Joseph Cella ("the Gibbs-PPI group"); Gulf Oil Corporation; Texaco Inc.; Monsanto Company; Ashland Oil Company; Union Texas Petroleum Corporation (a division of Allied Chemical Corporation); E. M. Warburg & Co., Inc.; and the Standard Oil Company (New Jersey).

(25) On June 15, 1961, Ivan E. Irizarry, Industrial Representative of EDA in New York sent a letter to John H. Gibbs which has been marked ~~at pretrial proceedings as Defendant's Exhibit 432-M for identification~~ as Joint Exhibit J-2.

(26) A preliminary draft of prospectus for Petrofina Puertorriquena, Inc. was prepared dated July 25, 1961, which has been marked ~~at pretrial proceedings as Defendant's Exhibit 452 for identification~~ as Joint Exhibit J-3. In August 1961, the Gibbs-PPI group arranged with Jack P. Coan and the consulting firm of which he was president and principal stockholder, Omega Management Inc. ("Omega"), to assist in the preparation of a feasibility study and brochures for a refinery in Puerto Rico. In this connection, Omega entered into an agreement with Universal Oil Products Company ("UOP") under date of September 12, 1961, which agreement is set forth in letters which have been marked ~~at pretrial proceedings as Defendant's Exhibits 404 and 404A for identification~~ as Joint Exhibits J-4 and J-5 and provides for UOP to furnish to Omega a general feasibility study of such a refinery in Puerto Rico. This UOP study entitled "Processing and Economic Data for a Proposed Puerto Rico Refinery" dated October 1961 was forwarded to Omega on October 13, 1961, which study and covering letter have been marked ~~at pretrial proceedings as Defendant's Exhibits 410B and 410C for identification~~ as Joint Exhibits J-6 and J-7.

(27) On October 10, 1961 the Gibbs-PPI group met with Ivan Irizarry, an official of EDA, and the meeting is described in a memorandum which has been marked ~~at pretrial proceedings as Defendant's Exhibit 432-K for identification~~ as Joint Exhibit J-8. On October 26, 1961 Sam Van Hyning, an

economic consultant employed by EDA, sent two memoranda to Durand which have been marked ~~at pretrial proceedings as Defendant's Exhibits 432-Y-2 and 432-Y-3 for identification~~ as Joint Exhibits J-9 and J-10. On November 1, 1961 Irizarry prepared a memorandum of his meeting with the Gibbs-PPI group which has been marked as ~~Defendant's Exhibit 432-B for identification~~ Joint Exhibit J-11 and on November 2, 1961 he prepared a memorandum of his telephone conversation with Van Hyning which has been marked ~~at pretrial proceedings as Defendant's Exhibit 432-AG-1 for identification.~~ as Joint Exhibit J-12. On November 3, 1961 Coan met with Van Hyning in Puerto Rico concerning a proposal by PPI and the meeting is described in a memorandum prepared by Van Hyning dated November 8, 1961 which has been marked ~~at pretrial proceedings as Defendant's Exhibit 432-AE for identification.~~ as Joint Exhibit J-13 Van Hyning sent a letter to Coan dated November 8, 1961 which has been marked ~~at pretrial proceedings as Defendant's Exhibit 432-AI for identification~~ as Joint Exhibit J-14 and Coan sent a letter to Van Hyning dated the same date, a copy of which has been marked ~~at pretrial proceedings as Defendant's Exhibit 432-AC for identification.~~ as Joint Exhibit J-15 By letter of November 24, 1961 and a memorandum of the same date, which have been marked ~~at pretrial proceedings as Defendant's Exhibits 432-AM and 432-AN for identification~~ as Joint Exhibits J-16 and J-17, Coan transmitted to Diaz Hernandez a proposed letter which he sought to have Durand, on behalf of EDA, write to PPI, care of Omega Management Inc., to record EDA's support of the PPI proposal.

(29) Under Presidential Proclamation 3279 of 1959, the United States Oil Import Control Program had been established and the Department of the Interior had issued Oil Import Regulations in implementation of the Program. EDA had contact with the responsible officials

of the Interior Department from time to time to remind the Department of the importance of assuring adequate oil supplies for the operation of the two existing refineries in Puerto Rico. The officials of EDA recognized that there would have to be changes made in the Oil Import Control Program for a third refinery to be built in Puerto Rico.

(29) Rafael Durand and Sam Van Hyning met at the San Juan airport with the Secretary of the Interior, Stewart L. Udall in December 1961 to discuss Puerto Rico's paucity of indigenous industrial raw materials and the fact that a growing petrochemical industry could partially compensate for this scarcity and that such an industry should not conflict with the basic objectives of the Oil Import Control Program.

(30) During December 1961, Gibbs in the company of Coan retained Oscar L. Chapman, of Washington, D.C., and his law firm as counsel to PPI to assist in obtaining the necessary oil import authorization for use in connection with the proposal for a refinery in Puerto Rico which the Gibbs-PPI group was then seeking to develop. The letter setting forth the terms of retainer dated December 11, 1961 has been marked ~~at pretrial proceedings as Defendant's Exhibit 463 for identification~~ as Joint Exhibit J-18. Chapman in turn requested Bruce K. Brown, a petroleum and petrochemical consultant, to advise him with respect to the proposal of the Gibbs-PPI group.

(31) EDA under date of December 12, 1961 sent a letter to PPI, care of Omega Management, Inc., stating its support for the PPI proposal, which letter has been

marked ~~at pretrial proceedings as Defendant's Exhibit 432-AP for identification.~~ as Joint Exhibit J-19

(32) In February 1962, the efforts of the Gibbs-PPI group to develop a proposal for a refinery in Puerto Rico were discontinued and the retainer of Chapman and his law firm as counsel to PPI was terminated.

F. The Activities of Brown in Conjunction with Chapman and Coan Pertaining to a Refinery in Puerto Rico

(33) Commencing in December 1961, at the request of Chapman, Brown undertook to analyze the PPI project. Brown submitted a letter and memorandum dated December 22, 1961 to Chapman which have been marked ~~at pretrial proceedings as Defendant's Exhibits 289 and 287 for identification.~~ as Joint Exhibits J-20 and J-21.

(34) In February 1962, after the efforts of the Gibbs-PPI group were discontinued, Chapman, Coan and Brown, and for a short period Gibbs individually, continued working together toward the development of a refinery in Puerto Rico. Coan asked UOP to perform a site survey for the location of a refinery in Puerto Rico and to evaluate the timing for engineering agreements, contractors' bidding, and construction necessary for completion of such a refinery. Pursuant to these requests, UOP provided in February 1962 a proposed schedule for the completion of the refinery, which has been marked ~~at pretrial proceedings as Defendant's Exhibit 413 for identification,~~ as Joint Exhibit J-22 and in March 1962 provided a site survey for the possible location of a refinery, which has been marked ~~at pretrial proceedings as Defendant's Exhibits 416 and 416A for identification.~~ as Joint Exhibit J-23.

In April 1962, pursuant to Coan's requests, UOP prepared and transmitted to Omega Management a revised and expanded general feasibility study for a refinery for Puerto Rico, based on a charge stock of 60,000 b/d of crude oil, which study has been marked as Joint Exhibits J-24 and J-25. ~~at pretrial proceedings as Defendant's Exhibits 420 and 423 for identification.~~

(35) On March 7, 1962 Coan and Gibbs visited the New York offices of Phillips Petroleum Company. Following this meeting, A.D. Fischbeck, a manager for the development of petrochemical projects in Phillips' New York office, prepared a memorandum which has been marked as Joint Exhibit J-26 ~~at pretrial proceedings as Plaintiff's Exhibit 8 for identification~~ and sent a letter to Coan dated March 9, 1962 which has been marked as Joint Exhibit J-27. ~~at pretrial proceedings as Plaintiff's Exhibit 142 for identification.~~ A subsequent meeting attended by Fischbeck, Brown and Coan, Richard Fleming of the Research and Engineering Department of Sun Oil Company and Aimison Jonmard, Vice President of Planning for Celanese Chemical Company, was held on or about March 16, 1962, a memorandum of which has been marked as Joint Exhibit J-28 ~~at pretrial proceedings as Plaintiff's Exhibit 144 for identification.~~ Thereafter Coan sent a letter dated March 22, 1962 to Fischbeck, which letter has been marked as Joint Exhibit J-29. ~~at pretrial proceedings as Plaintiff's Exhibit 143 for identification.~~ Fischbeck sent a letter to Coan dated April 2, 1962 which letter has been marked as Joint Exhibit J-30. ~~at pretrial proceedings as Plaintiff's Exhibit 145 for identification.~~

(36) On May 16, 1962 Brown met with the following members of the Phillips' management in Bartlesville,

Oklahoma: W.C. Hewitt, Chairman of the Operating Committee; C.M. Kittrell, Vice Chairman; J.L. Kyser, Manager of Supply and Transportation; A.J. Head, Manager of Phillips Chemical Company; and P.M. Arnold, Manager of Research and Development. With a letter dated May 16, 1962 addressed to the attention of W.C. Hewitt, which letter has been marked ~~at pretrial proceedings as Defendant's Exhibit 303 for identification~~ as Joint Exhibit J-31, Brown presented to Phillips a memorandum, which has been marked ~~at pretrial proceedings as Defendant's Exhibit 303A for identification~~ as Joint Exhibit J-32.

(37) On May 9, 1962 Chapman and Brown met with Cordell Moore, Oil Import Administrator in the U.S. Interior Department. A memorandum of the conference was prepared by Brown which has been marked ~~at pretrial proceedings as Defendant's Exhibit 302 for identification~~ as Joint Exhibit J-33.

(38) Durand with a covering letter dated May 18, 1962, provided a letter, also dated May 18, 1962, addressed to Chapman as General Counsel of Puerto Rico Chemical Company, Inc., which letters have been marked ~~at pretrial proceedings as Defendant's Exhibits 432-BY-1 and 432-BY-2 for identification~~ as Joint Exhibits J-34 and J-35.

(39) On May 31, 1962, a memorandum was sent by W.C. Hewitt of Phillips to William W. Keeler, which has been marked ~~at pretrial proceedings as Plaintiff's Exhibit 22 for identification.~~ as Joint Exhibit J-36. On June 5, 1962 Hewitt sent a letter to Brown pertaining to Brown's presentation to Phillips on May 16, 1962, which letter has been marked ~~at pretrial proceedings as Defendant's Exhibit 308 for identification~~ as Joint Exhibit J-37.

G. The Efforts of Chapman and Coan to Develop Sponsorship for a Refinery in Puerto Rico during the Summer and Fall of 1962

(40) Brown in June 1962 withdrew from further participation with Chapman and Coan in the attempt to develop a refinery in Puerto Rico. Chapman and Coan in July and August of 1962, explored the possibility of obtaining support for such a venture from a syndicate of investors in Puerto Rico headed by James J. Wilson, who was affiliated with the Insular Investments Corporation. Although the Wilson group expressed interest in the proposed project, Wilson did not agree with Chapman's terms for compensation for his services. Before the end of August 1962, Wilson expressed to Coan his lack of interest in proceeding further.

(41) On October 25, 1962, Coan sent a memorandum to EDA which has been marked as Joint Exhibit J-38, ~~at pretrial proceedings as Defendant's Exhibit 432-GR-1 for identification.~~

H. Some Developments During 1963

(42) Under date of March 20, 1963, EDA Administrator Rafael Durand sent a letter to Secretary Udall, with copy to Cordell Moore, Oil Import Administrator, which letter has been marked as Joint Exhibit J-39 ~~at pretrial proceedings as Defendant's Exhibit 399 for identification.~~

(43) In early August 1963 Chapman spoke with the President of Phillips, Stanley Learned. Chapman expressed confidence that the necessary oil import quota could be obtained by Phillips for a project in Puerto Rico, and Learned expressed interest in exploring this possibility. On August 7, 1963, Chapman and Michael W.

Shea, one of his law associates, met in Washington with representatives of Phillips. A memorandum of this meeting prepared by Michael Shea and dated August 8, 1963 has been marked as Joint Exhibit J-40. ~~at pretrial proceedings as Plaintiff's Exhibit 189 for identification.~~

(44) In October 1963 Coan arranged a meeting for representatives of Phillips with representatives of the New York office of EDA, including Diaz-Hernandez.

(45) A memorandum dated November 7, 1963, was delivered by Coan to Waldby which has been marked ~~at pretrial proceedings~~ with a covering letter as Joint Exhibit J-41, ~~as Plaintiff's Exhibit 185 for identification.~~ By letter agreement dated November 22, 1963 Phillips retained Coan and Omega as from November 1, 1963, which letter agreement has been marked as Joint Exhibit J-42. ~~at pretrial proceedings as Plaintiff's Exhibit 6 for identification.~~

I. Phillips' Submission to EDA of a Proposal for a Project in Puerto Rico

(46) Stanley Learned addressed a letter dated December 16, 1963 to Rafael Durand. The letter, which has been marked as Joint Exhibit J-43. ~~at pretrial proceedings as Plaintiff's Exhibit 271 for identification,~~ was taken to Puerto Rico and delivered to Rafael Durand by Diaz-Hernandez prior to December 20, 1963.

(47) In January 1964 executives of Phillips met in Puerto Rico with officers of EDA and other agencies of the Commonwealth Government to explain Phillips' proposal for establishing a project in Puerto Rico. On January 3, 1964 Stanley Learned, Paul J. Parker, W.C. Hewitt and Roy Waldby of Phillips and Martin Friedman of the law

firm of Chapman & Friedman, counsel to Phillips, met in San Juan with EDA Administrator Rafael Durand, Sanchez Rivera, President of the Puerto Rico Industrial Development Company (PRIDCO) and Sam Van Hyning, a consultant to EDA. Also on January 3, 1964, the Phillips representatives met with Diaz-Hernandez, Van Hyning, and certain officers of PRIDCO, including Sanchez Rivera, President, Varilo Oyding, Vice President for Finance and Rafael Ignacio, Vice President, and Jose Munez, Assistant Vice President for Development. On January 4, 1964, the Phillips group, accompanied by Owen Martinez of the PRIDCO staff, toured the Island by plane and car to view possible sites on the south and west coasts of Puerto Rico for the proposed complex.

(48) At the meeting on January 3, 1964 with representatives of the Commonwealth Government, Learned stated that the purpose of the visit was to explain the nature of Phillips' proposal and the organization and capabilities of Phillips to carry out such a proposal. Following Learned's statement, W.C. Hewitt described the various business activities of Phillips. At the same time, with a letter to Durand dated January 2, 1964, a brochure was submitted by the Phillips representatives to EDA entitled "Establishment of a Core Chemical Industry in Puerto Rico". The letter of transmittal has been marked as ~~at pretrial proceedings as Defendant's Exhibit 506 and~~ Joint Exhibit J-44 and the brochure as ~~Plaintiff's Exhibit 221 for identification.~~ Joint Exhibit J-45.

(49) Following the presentation to officials of

EDA and PRIDCO in Puerto Rico by Phillips personnel in January 1964, the officials of EDA made various suggestions for the manner in which the proposal might be presented to the U.S. Interior Department.

J. Submissions to the Interior Department by EDA and Phillips: January - June 1964

(50) Rafael Durand, under date of January 14, 1964 sent a telegram to Secretary of the Interior Udall which telegram has been marked ~~at pretrial proceedings as Defendant's Exhibit 341 for identification.~~ as Joint Exhibit J-46.

(51) On January 15, 1964, Chapman and his law firm filed a Petition for Allocation of Unfinished Oil-Puerto Rico on behalf of Phillips with the Oil Import Appeals Board which petition has been marked ~~at pretrial proceedings as Defendant's Exhibit 470 for identification.~~ as Joint Exhibit J-47.

(52) On January 28, 1964, Rafael Durand sent a letter to Secretary Udall which letter has been marked ~~at pretrial proceedings as Plaintiff's Exhibit 190 for identification.~~ as Joint Exhibit J-48.

(53) Chapman and his law firm submitted to the Oil Import Appeals Board in May 1964 a brief entitled "Brief in Support of Petition For Allocation of Unfinished Oils-Puerto Rico" which has been marked ~~at pretrial proceedings as Plaintiff's Exhibit 327 for identification.~~ as Joint Exhibit J-49

(54) On May 1, 1964 Chapman and his law firm submitted to the Oil Import Administrator, Cordell Moore, a letter with accompanying memorandum entitled

"Memorandum in Support of Request for Recommendation for Increase in Maximum Level of Imports of Unfinished Oils-Puerto Rico". A copy of the brochure marked as ~~Plaintiff's Exhibit 282 for identification~~ Joint Exhibit J-50 and of the "Brief in Support of Petition for Allocation of Unfinished Oils-Puerto Rico" marked as ~~Plaintiff's Exhibit 327 for identification~~ Joint Exhibit J-49 also were submitted with the letter. The letter dated May 1, 1964 and the accompanying memorandum have been marked at pretrial proceedings as ~~exhibits identified by~~ Joint Exhibit J-51 Chapman in response to Defendant's question No. 46. Under date of June 19, 1964, EDA Administrator Rafael Durand sent a letter to Assistant Secretary John M. Kelly of the Department of the Interior, which letter has been marked ~~at pretrial proceedings as Defendant's Exhibit 401 for identification.~~ as Joint Exhibit J-52.

K. The Hearing in July 1964 Before the Oil Import Appeals Board on the Phillips' Application and the Supplementary Submissions

(55) The Phillips' application for an import license created serious controversy in the oil industry, with competing oil companies opposing the granting to Phillips of the import authorization essential for the Puerto Rican project to go forward. On July 31, 1964, a public hearing on the application of Phillips for an oil import authorization for Puerto Rico was held before the Oil Import Administration of the Department of the Interior, at which EDA supported the Phillips' application and various representatives of other oil companies and oil industry groups appeared in opposition.

(56) At the hearing on July 31, 1964, testifying in support of the Phillips' application, were EDA Administrator Rafael Durand, accompanied by Amadeo I.D. Francis and Sam Van Hyning (Joint Exhibit J-53A) (Transcript, pp. 5-27); Stanley Learned, President and Chief Executive Officer of Phillips (Joint Exhibit J-53B) (Transcript, pp. 27-35, 76-89); Roy M. Waldby, Manager, Petroleum Projects Development, of Phillips (Joint Exhibit J-53C) (Transcript, pp. 35-43, 86-87, 89); Carl M. Kron, Manager, Marketing Research for elastomers, fertilizers and chemicals for Phillips (Joint Exhibit J-53 D) (Transcript, pp. 44-55, 87-88); and W.W. Keeler, Chairman of the Executive Committee of Phillips (Joint Exhibit J-53E) (Transcript, pp. 55-76). Phillips presented five exhibits in support of its presentation which have been marked as Joint Exhibit J-54. ~~at pretrial proceedings as Defendant's Exhibit 353 and Plaintiff's Exhibits 355A to 355D~~, inclusive, for identification.

(57) At the hearing on July 31, 1964, testifying in general in opposition to the Phillips' application for an oil import license were the following representatives of other oil companies and the oil industry: M.A. Wright, Director and Executive Vice President of Standard Oil Company (New Jersey) (Joint Exhibit J-55) (Transcript, pp. 90-93); Fred A. Billups, President of Tropical Gas Company, Inc. (Transcript, pp. 94-108); R.D. Bent, Vice President and Director of Atlantic Refining Company (Transcript, pp. 109-118); Leon Hess, of Hess Oil & Chemical Corporation (Transcript, pp. 119-128); Sam H. Casey, President, Commonwealth Oil Refining Company, Inc. (Transcript, pp. 129-159); Wilson Colberg, Esq.

on behalf of Compania Petrolera de Puerto Rico, Inc. (Transcript, pp. 160-167); C.G. Drescher, President of St. Clair Refining Company (Transcript, pp. 168-172); James F. Clifton, Executive Vice President of Texaco Inc. (Transcript, pp. 172-177); Jerry McAfee, Senior Vice President of Gulf Oil Corporation (Transcript, pp. 178-184); Russell B. Johnson, Esq. and Stanley Farrelly on behalf of Globe Oil Company Virgin Islands, Inc. (Transcript, pp. 185-195); George Meyers, Executive Vice President of Standard Oil Company of Indiana (Transcript, pp. 195-200); Barney Templeton, Manager, Purchases, Sales and Imports of SOCONY Mobile Oil Company, Inc. (Transcript, pp. 201-203); L. Dan Jones, General Counsel of the Independent Petroleum Association of America (Transcript, pp. 204-218); and J.G. Jiminez, Vice President of Tidewater Oil Company (Transcript, pp. 219-221).

(58) In August 1964, following the public hearing conducted by the Oil Import Administration of the Department of the Interior, EDA and Phillips submitted supplemental statements in support of Phillips' application for an oil import allocation dated respectively August 24, 1964 and August 26, 1964, which have been marked ~~at pretrial proceedings as Defendant's Exhibits 359 and 358 for identification.~~ as Joint Exhibits J-56 and J-57.

L. The Initial Determination of the Secretary of the Interior in February 1965 and the Negotiation of the Agreement between Phillips and EDA

(59) On February 11, 1965, Secretary of the Interior Udall issued a statement which has been

marked ~~at pretrial proceedings as Defendant's Exhibit 364 for identification.~~ as Joint Exhibit J-59.

(60) Following the Secretary of the Interior's announcement in February 1965, representatives of the Puerto Rican Government and Phillips in February 1965 entered into negotiations as to the definitive terms and conditions upon which Phillips would establish a project in Puerto Rico.

(61) Following the Secretary of the Interior's announcement in February 1965, there were renewed protests from representatives of other oil companies and oil industry groups. Under date of March 8, 1965 EDA Administrator Rafael Durand submitted a letter and memorandum to Secretary Udall summarizing the history of EDA's efforts to promote a third refinery in Puerto Rico, which letter and memorandum have been marked ~~at pretrial proceedings as Defendant's Exhibits 366 and 367 for identification.~~ as Joint Exhibits J-60 and J-61. Also under date of March 8, 1965, Learned sent a letter to Assistant Secretary John M. Kelly of the Interior Department which letter has been marked ~~at pretrial proceedings as Plaintiff's Exhibit 86 for identification.~~ as Joint Exhibit J-62.

(62) During March, 1965 additional public hearings were held in the Interior Department with respect to the Mandatory Oil Import Program. At these hearings, opponents of the Phillips' proposal recommended revisions in the import program as set forth in Appendix B to the statement of H.A. True, Jr., President of the Independent Petroleum Association

of America, given on March 10, 1965, which statement has been marked ~~at pretrial proceedings as Plaintiff's Exhibit 433 for identification~~ as Joint Exhibit J-63 and Appendix B to that statement as ~~Plaintiff's Exhibit 435 for identification.~~ Joint Exhibit J-64 In addition, Sam H. Casey, President of Commonwealth Oil Refining Company, Inc. presented a statement which has been marked ~~at pretrial proceedings as Plaintiff's Exhibit 436 for identification.~~ as Joint Exhibit J-65 EDA Administrator Rafael Durand submitted a Supplemental Statement on March 22, 1965 which has been marked ~~at pretrial proceedings as Defendant's Exhibit 368 for identification~~ as Joint Exhibit J-66. and Learned submitted a statement in a letter to Secretary Udall dated March 22, 1965 which has been marked ~~at pretrial proceedings as Defendant's Exhibit 369 for identification.~~ as Joint Exhibit J-67

(63) On May 14, 1965, the Department of the Interior released the text of a letter from Secretary Udall, dated May 11, 1965, to Governor Roberto Sanchez Vilella of Puerto Rico and Stanley Learned, President of Phillips, which release and letter have been marked ~~at pretrial proceedings as Defendant's Exhibits 372 and 371 for identification~~ as Joint Exhibits J-68. and J-69.

(64) Following the Secretary of the Interior's announcement of May 14, 1965, Phillips and the Commonwealth Government completed and entered into an agreement on May 27, 1965 which has been marked ~~at pretrial proceedings as Plaintiff's Exhibit 100 for identification.~~ as Joint Exhibit J-70.

(65) In connection with the agreement between

EDA and Phillips concerning the establishment of a core petrochemical facility in Puerto Rico, as a result of further discussions between EDA and Phillips, Durand sent a letter dated May 27, 1965 to Learned, which has been marked ~~at pretrial proceedings as Plaintiff's Exhibit 101 for identification~~ as Joint Exhibit J-71. In addition, Learned sent a letter dated June 11, 1965 to Secretary of the Interior Udall, which has been marked ~~at pretrial proceedings as Plaintiff's Exhibit 105 for identification~~ as Joint Exhibit J-72, in response to the Secretary's request to clarify the meaning of Phillips' commitment to limit motor fuel production of the project "to a maximum of 49.6% of the net charge stock used".

M. The Continuing Opposition and the Amendment in December 1965 of the Oil Import Proclamation

(66) Opposition from representatives of other oil companies and oil industry groups continued after the May 14, 1965 announcement of the Secretary of the Interior. On June 18, 1965, the Secretary made an announcement which has been marked ~~at pretrial proceedings as Defendant's Exhibit 373 for identification~~ as Joint Exhibit J-73. Following this announcement, the Governor of Puerto Rico, Roberto Sanchez Vilella, spoke to Secretary Udall by telephone and sent a letter to the Secretary dated June 29, 1965, which has been marked ~~at pretrial proceedings as Defendant's Exhibit 374 for identification.~~ as Joint Exhibit J-74

(67) On July 2, 1965 the Office of the Secretary of the Interior announced the establishment of an inter-agency committee to review proposed modifi-

cations of the Mandatory Oil Import Program established by Presidential Proclamation 3279, which announcement has been marked ~~at pretrial proceedings~~ as Joint Exhibit J-75. ~~as Defendant's Exhibit 377 for identification.~~

(68) While the Phillips' application for an oil import allocation and other amendments of the Mandatory Oil Import Program were being considered by the special cabinet committee, EDA Administrator Rafael Durand, on August 8, 1965, issued a statement which has been marked ~~at pretrial proceedings~~ as Joint Exhibit J-76. ~~as Plaintiff's Exhibit 115 for identification.~~

(69) Learned sent a letter dated November 12, 1965 to Cordell Moore, Administrator of the Oil Import Administration, which letter has been marked as Joint Exhibit J-77. ~~at pretrial proceedings as Plaintiff's Exhibit 117 for identification.~~

(70) On November 10, 1965 EDA Administrator Durand met in Washington with Lee White, special counsel to the President. Governor Sanchez of Puerto Rico sent a letter dated November 13, 1965, to President Johnson which has been marked ~~at pretrial proceedings as Defendant's Exhibit 379 for identification.~~ as Joint Exhibit J-78 Durand sent a letter dated November 14, 1965 to Lee White which letter has been marked as Joint Exhibit J-79 ~~at pretrial proceedings as Defendant's Exhibit 380 for identification.~~ On December 4, 1965 Durand again wrote to White. This letter has been marked as Joint Exhibit J-80. ~~at pretrial proceedings as Defendant's Exhibit 381 for identification.~~

(71) By Proclamation dated December 10, 1965

President Johnson amended the Mandatory Oil Import Program (as established by Presidential Proclamation 3279), providing, inter alia, that the Secretary of the Interior may grant, in instances in which the Secretary determines that such action would not impair the accomplishment of the objectives of the Proclamation, "allocation of imports of crude oil and unfinished oils into Puerto Rico to persons as feedstocks for facilities ... which in the judgment of the Secretary will promote substantial expansion of employment in Puerto Rico through industrial development." The Proclamation modifying Proclamation 3279 has been marked ~~at pre-~~ as Joint Exhibit J-81 ~~trial proceedings as Defendant's Exhibit 383 for identification.~~ In a related announcement which has been marked as Joint Exhibit J-82 ~~at pretrial proceedings as Defendant's Exhibit 382 for identification~~, the Department of the Interior noted that the December 10, 1965 Proclamation of the President was based on the "unanimous recommendation of the Department of the Interior and all other interested Federal Departments and Agencies."

(72) On December 21, 1965, the Secretary of the Interior issued amendments to Oil Import Regulation 1, effective January 1, 1966, (Code of Federal Regulations, Title 32A - National Defense, Appendix, Chapter X - Oil Import Administration), which have been marked as Joint Exhibit J-83. ~~at pretrial proceedings as Defendant's Exhibit 385 for identification.~~ On December 23, 1965, Secretary of the Interior Udall issued an

order which has been marked ~~at pretrial proceedings as Defendant's Exhibit 391 for identification~~ as Joint Exhibit J-84. On April 18, 1973, Presidential Proclamation 4210 was issued, effective May 1, 1973, modifying Proclamation 3279.

N. Events in 1966 and 1967

(73) In January, 1966, Phillips Puerto Rico Core, Inc. ("CORE"), was incorporated under the laws of Delaware. In March, 1966 the capital stock of CORE was distributed 75 percent to Phillips, 25 percent to PRIDCO. (In 1970, Phillips purchased from PRIDCO the 25 percent of the capital stock of CORE then owned by PRIDCO.) On March 14, 1966 a contract was entered into between Phillips, PRIDCO and EDA which has been marked ~~at pretrial proceedings as Plaintiff's Exhibit 134 for identification.~~ as Joint Exhibit J-85.

(74) Jack P. Coan died on March 27, 1966.

(75) On September 27, 1967 the complaint in the present action by Prudential New York against Phillips was filed in the United States District Court for the Southern District of New York.

Stipulated Facts with Reference to Petroleum, its Basic and Intermediate Processing, and the Associated Industrial Activities

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

PRUDENTIAL OIL COMPANY, :

Plaintiff, :

-against- : 67 Civ. 3748 (CLB)

PHILLIPS PETROLEUM COMPANY, :

Defendant. :

- -x

STIPULATED FACTS WITH REFERENCE TO PETROLEUM, ITS BASIC AND INTERMEDIATE PROCESSING, ITS PRODUCTS AND THE ASSOCIATED INDUSTRIAL ACTIVITIES

	Page
Petroleum (para. 18)	1
Paraffins	2
Olefins	3
Naphthenes	4
Aromatics	4
Basic Processing of Crude (para. 19)	6
Distillation	6
Cracking	8
Thermal Reforming	11
Catalytic Reforming	11
Solvent Extraction	12
Intermediate Products derived from petroleum, the processes by which they are derived, and the commercial uses to which the chemical products are put (para. 20)	12
(a) The derivation of chemicals from petroleum hydrocarbons	12
(b) The principal processes by which intermediate products are derived and the resulting production of chemicals	13
The End Products of Petroleum Production (para. 21)	26
(a) Fuel and lubricants	27

Page

(b) Fabricated plastics 27

(c) Rubber products 28

(d) Fabrics 28

(e) Industrial chemicals 28

(f) Agricultural chemicals 28

(g) Drugs, cosmetics and detergents 29

(h) Paints, dyes and finishes 29

Summary of the Petroleum and Petrochemical Business (para. 22). 29

(a) Exploration for and production of crude oil 29

(b) Separation of crude oil from gas and other substances 30

(c) Transportation of crude oil to the refinery 31

(d) Refining and further processing 31

(e) Marketing and distribution of products 32

D. Petroleum, Its basic and Intermediate Processing, Its Products, and the Associated Industrial Activities

(18) Petroleum --

(a) Petroleum ("crude" or "crude oil") as it comes from the ground is a mixture of thousands of different compounds that range from extremely light gases to semi-solid materials at ordinary room temperatures, such as asphalt or paraffin wax. The gases are dissolved to some extent in the other components of crude oil because of the extreme pressure to which petroleum is subjected in the ground. Likewise, paraffin wax is dissolved in the so-called paraffinic crudes but can be removed by combinations of refrigeration and filtration or by the application of selective solvents to appropriate fractions of crude oil. As a liquid, petroleum may be as black and thick as melted tar, or as colorless and thin as water. Its characteristics depend entirely upon the particular oil field from which it comes.

(b) Chemically, crude oil is largely composed of hydrocarbons. These are compounds of hydrogen and carbon but they have substantially different characteristics from those of hydrogen (a light, colorless, odorless gas) and carbon (a black solid) which combine in various proportions to form the hydrocarbons. In addition, crude oil often contains sulfur, either uncombined or present as a part of certain hydrogen-carbon-sulfur compounds, as well as metals and nitrogen.

(c) The four major groups of petroleum hydrocarbons are paraffins, naphthenes, aromatics and olefins. Olefins do not normally occur in crude oil in significant concentrations, but result from certain refinery processes.

(i) Paraffins -- The paraffins, often called alkanes, occur as chain structure hydrocarbons (which refers to their molecular structure, the arrangement of the atoms in the hydrocarbon molecule). Paraffin hydrocarbons include the following: methane, ethane, propane, butane and pentane. Methane, ethane and propane, which are gases at room temperature, are used for industrial and domestic fuel and as feedstocks for further processing into petrochemical compounds, including acetylene, ethylene and propylene. Butane, also a gas at room temperature, is used as gas for heating and cooking and in blended gasoline. Pentane, which at room temperature may be either a gas or liquid, is used in gasoline. In regard to the form of hydrocarbons, the following rule usually prevails: the lower the molecular weight of the hydrocarbon, the lower its boiling point. In turn, the boiling point of a hydrocarbon determines its condition as a gas, liquid or solid, at ordinary room temperatures and pressures. Paraffinic hydro-

carbons are called "normal" when their carbon atoms are arranged in a straight-chain configuration. In the case of butane and pentane, it is possible to have two or more distinct compounds having the same number of hydrogen and carbon atoms. These variations, known as isomers, are characterized by a different arrangement of the atoms within the molecule.

(ii) Olefins -- Olefins resemble the paraffins except that the olefin molecules have two or more less hydrogen atoms and contain one or more chemical "double bonds" between two of the carbon atoms and thus are referred to as unsaturated hydrocarbons. For example, the olefin butylene is similar to butane, a paraffin, except that two of the hydrogen atoms of the butane molecule have been replaced by a double bond between two carbon atoms. As is the case with paraffins, by re-arrangement of the atoms within the molecule there can be isomers of the olefins. An isomer of butylene would be isobutylene. It has the same number of carbon and hydrogen atoms in its molecule, but they are not arranged in a straight "chain". The chain is "branched" by having one carbon atom attached to the middle of three carbon atoms in the straight chain. There are also olefin-type compounds containing more than one double bond. These are called di-olefins, as in the case of butadiene, which has two double bonds. Each double bond replaces two hydrogen

atoms. Butadiene is an ingredient for the manufacture of synthetic rubber and plastics.

(iii) Naphthenes -- Naphthenes, which are also referred to as cycloparaffins, have their carbon atoms arranged in a ring. By removing two hydrogen atoms from each of the end carbon atoms of a paraffin chain and joining the two ends together, thereby closing the ring, a naphthene hydrocarbon is formed. Cyclohexane is an important naphthene which serves, among other uses, as a major raw material for the production of nylon. Cyclohexane is usually produced commercially by the hydrogenation of benzene, as later described. Conversely, aromatics can be produced by dehydrogenation of benezene and of naphthenes as described in the following paragraphs.

(iv) Aromatics -- The term aromatics was originally applied to benzene and its derivatives because of their characteristic odor. Aromatics are a further family of hydrocarbons with a ring-type arrangement of atoms within the molecule. Moreover, naphthenes may be converted into aromatics by removal of hydrogen. The basic structure of aromatics is typified by benzene, but the aromatics include many hundreds of related compounds, for example, toluene (methyl benzene) and xylene (dimethyl benzene). Aromatics are produced in very substantial quantities for use in aviation and automotive fuels and as basic ingredients for various chemical products. Ethyl-benzene, meta-xylene, ortho-

xylene and para-xylene are all examples of aromatics which are important petrochemical building blocks. Para-xylene is, for example, a principal raw material in polyester synthetic fibers, ethylbenzene is coverted by simple dehydrogenation to styrene, an important component of several plastics and synthetic rubber, and ortho-xylene is a principal feedstock for manufacture of phthalic anhydride, a component of alkydresins and plasticizers for polyvinyl chloride.

(A) All of the above-mentioned C_8 aromatics are normally produced commercially by physical separation of the various isomers from the mixed eight carbon atom (C_8) aromatic stream obtained by catalytic reforming and selective solvent extraction of hydrocarbon fractions. The separation of the various C_8 aromatics is performed by physical means including distillation and crystallization. In addition, catalytic isomerization of C_8 aromatics may be used to increase yields of desired isomers at the expense of others. Isomerization is often used for increase the yield of paraxylene, a principal raw material for polyester synthetic fibers.

(B) There is another special class of aromatic hydrocarbons called poly-nuclear aromatics, in which two or more benzene rings share at least two carbon atoms on one side of the ring in common. These include naphthalene (two ring structure) and anthracene and phenanthrene (three ring structure) and their homologs. The most important of these materials commercially is naphthalene, the substance of which the common mothball is comprised. Naphthalene was originally derived principally from coal tar and its main use was for

oxidation to produce phthalic-anhydride. During the 1950's processes were developed for manufacturing naphthalene from petroleum to supplement the growing demand for naphthalene from coal tar. As increased use of PVC resins required growing volumes of phasticizers based on phthalic-anhydride, the demand for this material was increasing rapidly during the latter 1950's and early 1960's. Phthalic-anhydride can also be produced by oxidation of ortho-xylene, and in fact, some phthalic-anhydride plants were built which had the capacity of processing alternatively naphthalene or ortho-xylene feedstocks, or mixtures of the two.

(C) About concurrent with the development of commercial processes for manufacture of naphthalene from petroleum, the oxidation of ortho-xylene to phthalic-anhydride was developed to the extent that it become economically preferable to oxidation of naphthalene either from coal tar or a petroleum source. Consequently, most phthalic-anhydride plants built after the early 1960's are designed principally for ortho-xylene feeds, and commercial petrochemical operations have been oriented toward increasing supplies of petroleum based ortho-xylene rather than petroleum derived naphthalene. Both feedstocks, however, are still used extensively in phthalic-anhydride manufacture.

(19) Basic Processing of Crude Oil --

(a) Distillation -- Petroleum refining begins with the distillation of crude oil into fractions or cuts of different boiling ranges. Crude oil is a mixture of thousands of hydrocarbons of different molecular sizes, structures and boiling points. Since a hydrocarbon's boiling point is substantially

related to the size of its molecule, separation by boiling points (distillation) also results in separation by hydrocarbon molecule size.

(i) In distillation, crude oil is heated to a high temperature (typically 700-800° F.) and pumped into a fractionating tower. The typical "bubble tower" consists of 20, 30 or more trays with bubble caps, through which vapors can rise from below, and overflow pipes through which condensed liquid can return to the tray below. The hot crude oil enters the tower about six or seven trays from the bottom, and most of it immediately "flashes" into vapors once the pumping pressure has been relieved. These vapors pass upward through the bubble caps, rising higher and higher until a tray is reached where the temperature is low enough for hydrocarbons of that boiling point to condense into liquid.

(ii) The following identifications are commonly used to identify the various divisions or cuts of crude oil obtained through distillation, listed from the lightest to the heaviest cuts:

(A) Gas;

(B) Gasoline;

(C) Naphtha;

(D) Kerosene;

(E) Light gas-oil;

(F) Heavy gas-oil;

(G) Fuel oil or Residuum.

(iii) The fractionating tower regulates the

actual cuts into which the crude oil will be separated and its design and the characteristics of the particular crude oil charge stock will determine the percentage yields of the individual cuts. The light gas oils and heavier fractions collect on trays near the bottom of the fractionating tower. The kerosene fractions condense farther up in the tower, and gasoline vapors are taken off the top, along with light gases that neither condense nor dissolve in the gasoline fraction. The gasoline vapors are then condensed, and part of the liquid is returned as "reflux" to the top tray to improve separation of the somewhat heavier gasoline-range hydrocarbons that condense on trays near the top. The gasoline-range fraction distilled from crude oil is called light virgin naphtha or more often, straightrun gasoline.

(b) Cracking -- Early in the history of petroleum refining it was found that higher-boiling hydrocarbons (the heavier cuts of crude oil) could be broken down or "cracked" into lower-boiling, lighter hydrocarbons by subjecting them to high temperatures. A form of cracking was used as early as 1869 to convert heavier than kerosene crude-oil fractions into kerosene. Use of cracking processes to produce gasoline began in 1913. All of the process variations applied commercially prior to 1936 employed a method called thermal cracking. The modern processes, which have now almost completely replaced the earlier process, are catalytic cracking and hydrocracking.

(i) Thermal Cracking -- Because of the high

temperatures required in thermal cracking (up to 1,000° F. or more), high pressures are usually employed (350 to 1,000 pounds per square inch) in order to keep the feedstock liquid while it undergoes cracking reactions. Otherwise, individual hydrocarbons would be overdecomposed, forming light gases and laying down coke-like solid deposits inside the cracking unit.

(ii) Catalytic Cracking -- High temperatures and pressures are not required, however, when cracking is carried out in the presence of a catalyst (a substance that greatly speeds up chemical reactions without being itself altered or destroyed). The catalyst offers a large amount of surface on which the cracking reactions occur. Carbon formed by these reactions is deposited on the surface of the catalyst and is later burned off by a stream of air in a catalyst-regeneration step. The main source of feed to catalytic cracking units are the heavy distillates, commonly known as gas oils, which are produced from crude oil -- these typically boil between 450° F. and an end point that exceeds 1,000° F. The product spectrum, which can be adjusted by a number of operating factors, runs the full range from hydrogen, a light gas, on one extreme to a heavy No. 6 fuel oil component at the other extreme.

(iii) Hydrocracking -- Hydrocracking is a process in which cracking occurs in the presence of both hydrogen and a catalyst. The possibility and

desirability of this type of cracking had been known for a number of years. However, it did not become economically feasible until the 1960's. In a sense, hydrocracking and catalytic cracking are in competition with one another, since a gas-oil charge can be processed in either unit. Despite this apparent conflict and the established use of catalytic cracking, there has been increased use of hydrocracking because of several advantages it offers. It increases the flexibility of refinery operation because it can process a wide variety of feedstocks, including virgin gas oils, catalytic cracking cycle oils, coker gas oil, and very heavy oils. The yields from this unit may include high quality gasoline, jet fuel, and distillate-fuel components. Unlike the catalytic cracking products, these are all storage-stable components and highly hydrogen-saturated compounds.

(iv) Dealkylation -- A special cracking process ordinarily applied to petrochemical precursors is called "dealkylation." In this process, alkyl side chains are removed from benzene or naphthalene rings to covert alkyl benzenes to benzene, or alkyl naphthalenes to naphthalene. While ethyl and higher carbon atom side chains can be removed in this manner without destroying the aromatic nucleus by rupturing the ring structure, commercial application of dealkylation processes is generally limited to removal of one, or at most two, methyl groups from the aromatic ring. The process operates

in an atmosphere of high hydrogen concentration. Hydrogen replaces the carbon-to-carbon bond by which the methyl group is attached to the aromatic nucleus, and also saturates the methyl group to form methane as a major product. Both catalytic and thermal processes are available. Among the commercial names used for such hydrodealkylation processes are "Hydeal", "Detol" and "HDA".

(c) Thermal Reforming -- In addition to "cracking", which breaks larger molecules into smaller ones and thereby converts heavier cuts of crude oil into lighter hydrocarbons, it was found that by passing naphtha fractions of petroleum feedstock through tubes in a furnace at high pressure (750-1000 pounds per square inch) and heating to 1000-1100° F., hydrocarbon molecules could be recombined or "reformed" into hydrocarbons with higher octane numbers. The octane number of a gasoline is a measure of its antiknock value. Accordingly, reforming of feedstock destined for use as motor fuel became an important processing step to improve the quality of gasoline. With the development of catalytic reforming in the early 1940's, thermal reforming has become of lesser importance and is now insignificant in commercial refining operations.

(d) Catalytic Reforming -- Just as thermal cracking has largely been replaced by catalytic cracking, thermal reforming has been replaced by catalytic reforming as a method for improving octane number. Moreover, by catalytic reforming it is possible to convert naphthenes to aromatics and hydrogen, and some paraffins

can be restructured to form aromatic rings.

(e) Solvent Extraction -- By use of special solvents it is possible to separate portions of a hydrocarbon mixture according to its chemical structure or group, i.e., paraffin, olefin, naphthene, or aromatic. This is especially useful for compounds which have similar boiling points and which, therefore, are not readily separable by fractionation or distillation. When the solvent is mixed with the feedstock under proper conditions of temperature and pressure, a portion is dissolved in the solvent. After removal from the contacting vessel or area, the desired portion is recovered by evaporation of the solvent. This recovered portion is known as extract. The extract recovered through the use of solvents is predominately "aromatic" in composition. The portion of feedstock which remains undissolved is referred to as raffinate. There are a number of commercially available processes for separation of gasoline boiling range hydrocarbons by hydrocarbon type. The Sulfolane and Udex processes are more widely used than any other.

(20) Intermediate products derived from petroleum, the processes by which they are derived, and the commercial uses to which the chemical products are put.

(a) The derivation of chemicals from petroleum hydrocarbons —

(i) Since petroleum is essentially complex combinations of carbon and hydrogen atoms and since carbon and hydrogen are important components of many industrial chemicals, attempts were made at an early stage in petroleum production to use petroleum

BEST COPY AVAILABLE

hydrocarbons as feedstock for the chemical industry in place of coal or fermentation products which had previously been the chief raw materials. The first successful work on an industrial scale was carried out approximately fifty years ago in a plant which produced acetone, a solvent of importance for explosives, from refinery gases.

(ii) The development since that time of the chemical industry based on petroleum intermediates is reflected in the fact that the total production of primary organic chemicals based on petroleum in 1965 was 5.5 million tons in Europe and 18 million tons in the United States. In addition to the United States and Europe, other areas such as Russia, Japan, India, Australia, South Africa and South America have growing petroleum chemical industries.

(iii) Outside the United States, the principal feedstock for petroleum chemicals has been liquid rather than gas. There were two main reasons for this: on the one hand, in Europe and elsewhere the gaseous feedstocks, which were readily available in the continental United States were virtually absent until recently; and, on the other hand, there was a surplus outside the United States until the late 1960's of the naphtha fraction, which in the United States was needed as a gasoline feedstock because of the heavy demand for gasoline as a motor fuel.

BEST COPY AVAILABLE

(b) <u>The principal processes by which intermediate products are derived and the resulting production of</u>

chemicals -- The principal processes by which petroleum hydrocarbons are converted into raw materials for the chemical industry (which are subsequently described in relation to the products produced) may conveniently be classified as follows: removal of hydrogen leading to unsaturated hydrocarbons; removal of hydrogen to obtain aromatics; oxidation; chlorination; sulphuration; isolation of carbon; and isolation of hydrogen.

(i) Products derived by removing hydrogen --

(A) Removal of hydrogen to obtain olefins -- This process is one of the most important routes by which oil feedstocks are converted into chemicals. This may be done catalytically, or in the absence of a catalyst under conditions in which rupture of the carbon chain also takes place.

[1] Under mild catalytic conditions the removal of hydrogen from a paraffinic fraction occurs without any change in the carbon structure. An example is the production of butadiene from butane or butane by dehydrogenation at about 350-480° C. in the presence of a catalyst.

[2] Much more commonly hydrogen is removed in the absence of a catalyst under conditions in which rupture of the carbon chain also takes place. Thus paraffin wax may be cracked at about 500° C. to yield a mixture of olefins with a range of chain lengths. The products are separated into fractions of different chain lengths, the

higher of which may be used for detergent manufacture, for example, and the lower for production of plasticizer alcohols.

[3] The most common operation for removing hydrogen is cracking to produce the lower olefins. More vigorous conditions are required than for cracking paraffin wax and thus temperatures are employed in the range of 650-850° C and higher. The lower olefins ethylene, propylene, butenes and butadiene are the main desired products and, to minimize their further reaction with one another, they are diluted by introducing steam into the feedstock stream and, as a further step, the products of cracking are rapidly cooled or quenched.

[4] The relative proportions of the lower olefins produced depends principally upon the nature of the feedstock used and upon the conditions of cracking. Although small-scale operations based on crude oil have been carried out, and gas oil is currently employed on some commercial installations, the most generally used feedstock for steam cracking outside the United States is naphtha. Using this as the basis, all the lower olefins mentioned are produced in useful amounts, the ethylene yield increasing from 14 per cent to over 30 per cent as the cracking temperature increases

from 650 to 850° C. The increased yield of ethylene is obtained at the expense of propylene and butene, though the yield of butadiene is not materially affected.

[5] In the continental United States, lighter fractions, especially ethane or propane, which are extracted from natural gas, are used extensively as feedstocks for cracking. Compared with naphtha they give higher yields of ethylene on cracking -- for example, in cracking ethane the yield of ethylene reaches 75-85 per cent by repeated recycling. However, in such an operation the production of propylene, butene and butadiene is insignificant.

[6] The lower olefins are gases and the first step to their utilization is to separate them from those components of the cracked products which are liquids under normal ambient conditions. The major portion of the liquid components has a high octane number and may be blended into gasoline after treatment. This treatment consists in the removal of the bulk of the di-olefins which polymerize on storage to give gums, a residue remaining upon evaporation.

[7] The gaseous components of the cracked products are a complex mixture containing not only the desired lower olefins but also hydrogen, methane and other hydro-

carbon gases. They are separated by distillation under conditions of refrigeration and pressure into C_1, C_2, C_3 and C_4 fractions. After isolation, the individual C_2, C_3 and C_4 olefins are used as building blocks for the production of a wide range of industrial chemicals, plastics and synthetic fibers, including the following:

[a] Ethylene and its derivatives -- Ethylene is utilized to produce the following compounds: Polyethylene, Ethylene oxide, Styrene, Ethyl alcohol, Acetaldehyde, and Ethylene dichloride. These primary products in turn undergo further processing whereby they are converted into the following ultimate consumer products:

[i] Polyethylene - Films, mouldings, pipes, cable covering, netting, and others.

[ii] Ethylene oxide - Intermediate for: ethylene glycol used as anti-freeze and raw material for polyester fibers known under various trademarks, including "Dacron", "Quintanna" and "Kodell"; and for detergents, textile assistants, solvents, and others.

[iii] Styrene - Mainly for polystyrene plastics; also for synthetic rubber.

[iv] Ethyl alcohol - Industrial solvent and chemical intermediate.

[v] Acetaldehyde - Converted into acetic acid (for cellulose acetate fibers and plastics and for polyvinyl acetate adhesives and emulsion paints), into plasticizer alcohols and into paint resin intermediates.

[vi] Ethylene dichloride - Converted into vinyl chloride and thence into polyvinyl chloride (PVC) heat workable plastics, including phonograph records, plastic toys, vinyl flooring, artificial leather and many other products.

[b] Propylene and its derivatives --

The production of propylene is utilized to produce the following primary products: Isopropyl alcohol, Butanol and Ethyl hexanol, Heptenes and Propylene tetramer, Cumene, Propylene oxide, Polypropylene, Glycerol, Acrylonitrile. These primary products are further converted for the following applications:

[i] Isopropyl alcohol - Partly converted to acetone which, like isopropyl alcohol itself, is used as a solvent and a chemical intermediate.

[ii] Butanol - Solvent and chemical intermediate.

[iii] Ethyl hexanol - Plasticizers.

[iv] Heptenes - Plasticizer alcohols.

[v] Propylene tetramer - Reacted with benzene to give dodecyl benzene for detergents.

[vi] Cumene - Raw material for simultaneous production of acetone and phenol, an intermediate for plastics and nylon.

[vii] Propylene oxide - Intermediate for manufacture of plastic foams.

[viii] Polypropylene - Films, fibers and plastic moldings.

[ix] Glycerol - Pharmaceutical and raw material for resin manufacture.

[x] Acrylonitrile - Basis for acrylic fibers and intermediate for adiponitrile, a raw material for nylon.

[c] C_4 Olefins and their derivatives -- C_4 olefins are used in chemical manufacture for the production of n-Butenes, iso-Butane and Butadiene. Some of the more important resulting products from this group of intermediates are the following:

[i] n-Butenes:

[A] sec-Butanol - Solvent

[B] Methyl ethyl ketone - Solvent and lube-oil dewaxing agent.

[C] Heptenes - Plasticizer alcohol intermediate.

[ii] iso-Butene:

[A] Butyl rubber - Inner tubes and specialty rubbers.

[B] Polyisobutene - Lube-oil additives and sealing compounds.

[C] Di-isobutene - Plasticizer alcohol intermediate.

[iii] Butadiene:

[A] Copolymers with styrene - Synthetic rubber, shoe soling compounds.

[B] Polybutadiene - Synthetic rubber.

[C] Copolymers with acrylonitrile - Specialty rubbers.

[D] Copolymers with styrene and Acrylonitrile - Plastics.

[E] Chloroprene - Specialty oil-resistant rubbers.

[F] Adiponitrile - Raw material for nylon.

(B) Removal of hydrogen to obtain Acetylene -- If more severe cracking conditions are employed than those used to produce ethylene from petroleum feedstocks, further hydrogen can be removed with a resulting formation of acetylene.

[1] Acetylene thus formed is competitive with acetylene produced by the more traditional process based on generation from calcium carbide produced from lime and coal with an accompanying use of large quantities of electric power. The production of acetylene from petroleum

is used to produce the following chemicals: Vinyl chloride, Acetaldehyde, Per- and trichlorethylene, Vinyl acetate, Chloroprene, and Acrylonitrile. These primary acetylene products are further converted to produce the following products:

[a] Vinyl chloride - Polyvinyl chloride (PVC) plastics.

[b] Acetaldehyde - Converted into acetic acid (for cellulose acetate fibers and plastics and for polyvinyl acetate adhesives and emulsion paints), into plasticizer alchohols and into paint resin intermediates.

[c] Per- and trichlorethylene - Dry-cleaning and grease-removing solvents.

[d] Vinyl acetate - Polyvinyl acetate emulsion paints and adhesives.

[e] Chloroprene - Specialty oil-resistant rubbers.

[f] Acrylonitrile - Basis for acrylic fibers and intermediate for adiponitrile, a raw material for nylon.

[2] Since more severe conditions are required to produce acetylene than olefins from petroleum sources, it is inevitably more expensive. Efforts have therefore been made to develop other routes to the products which have hitherto been based on acetylene and, of those listed above, all except trichlorethylene can now be made

competitively from less unsaturated hydrocarbons, leading to an anticipated decline in the importance of acetylene as a petrochemical intermediate.

(C) Removal of Hydrogen to obtain aromatics -- The most commonly used process for removing hydrogen to yield aromatics is catalytic reforming. This process can be used to produce aromatic ring compounds both from naphthenes and from paraffins. The aromatics extracted from the paraffins and naphthenes are then distilled to give benzene, toluene and the xylenes as three separate fractions. These three aromatics are of substantial importance as chemical raw materials.

[1] From the point of view of their chemical structures, benzene is the simplest of the aromatic compounds since it is a six-membered ring of carbon atoms with one hydrogen atom attached to each. In toluene there is an additional carbon atom attached to one of the members of the ring. In xylene there is one additional carbon atom attached to each of two members of the ring. There are three xylenes (differentiated by the prefixes "ortho", "meta" and "para"), differing only in the relative position of the two extracyclic carbon atoms.

[2] In addition to their use in gasoline

and in intermediate conversion (for example, the conversion of toluene into benzene through the process of hydrodealkylation), aromatic products are used to manufacture various chemical intermediates and commercial products, including the following:

[a] Benzene:

[i] Styrene - Polystyrene plastics and synthetic rubber.

[ii] Phenol - Intermediate for resins.

[iii] Cyclohexane, produced by the catalytic hydrogenation of benzene, is an intermediate for nylon production.

[iv] Dodecylbenzene - Detergents.

[v] Aniline - Dyestuffs and rubber additives.

[vi] Maleic anhydride - Raw material for polyester glass-fiber plastics.

[b] Toluene

[i] Toluene diisocyanate - Plastic foams.

[ii] Phenol - Intermediate for resins.

[iii] TNT - Explosives.

[iv] Solvents - Paints and lacquers.

[c] Xylenes-- Xylenes are separated into ortho, meta, and para xylenes through a combination of fractionation (boiling point separation) and crystallization (freezing point separation)

[i] Solvents (mixed xylenes) - Paints, lacquers and insecticides.

[ii] Terephthalic acid (from paraxylene) - Polyester fibers.

[iii] Phthalic anhydride (from ortho-xylene) - Phthalatic plasticizers and resins.

[iv] Isophthalic acid (from meta-xylene) - Resins.

(ii) Products derived by oxidation --

(A) Oxidation without alteration of the carbon structure -- Methods of oxidation of petroleum hydrocarbons without change of carbon structure have only recently been developed to a commercial scale. The feedstock is a linear (or straight-chain) paraffin and the product is an alcohol which is marketed as a basis for a biodegradable detergent.

(B) Oxidation with rupture of the carbon chain -- More vigorous methods of oxidation, in particular using higher temperatures, introduce more oxygen into the hydrocarbon and result in the rupture of the carbon structure.

(iii) Products derived by chlorination with rupture of the carbon chain -- Chlorination of light hydrocarbons such as propane at a temperature of 500-650°C leads to simultaneous ruptures of the carbon chain producing carbon tetrachloride and hydrogen chloride. Under these conditions, carbon tetrachloride undergoes a further reaction with the formation of perchlorethylene, an extensively used dry-cleaning agent.

(iv) Products derived by sulphuration -- While sulphur will react with hydrocarbons gen-

erally, the resulting products have not been found of commercial value except when applied to methane. The reaction, which occurs at 650-700°C in the presence of a catalyst, results in the formation of carbon disulphide, used for the manufacture of viscose rayon and regenerated cellulose film (Cellophane). It is also employed as an intermediate for the production of carbon tetrachloride though, as already noted, this product may also be obtained by chlorination of methane.

(v) Isolation of Carbon -- By cracking hydrocarbons at high temperatures (1,300-1,650°C) complete decomposition into hydrogen and carbon is effected. The resulting carbon in finely divided particles is known as carbon black which is used for the reinforcement of natural and synthetic rubber in tires for motor vehicles, as well as in plastics, printing inks, lacquers and phonograph records. Aromatics with high carbon content are the most desirable feedstocks for carbon black production.

(vi) Isolation of Hydrogen - Two main methods are available for the production of hydrogen from petroleum hydrocarbons, namely, steam reforming and partial oxidation with a restricted supply of oxygen. Both produce a so-called "synthesis gas". In each method the carbon is removed and the hydrogen released for further reaction as required. The principal uses of hydrogen in chemi-

cal manufacture are for the following products:

(A) Ammonia -- The production of Ammonia takes place under very severe conditions in the presence of an iron catalyst, high pressures and temperatures of 450-500°C. It is an important source of nitrogen in fertilizers and a source of urea which serves as a fertilizer and cattle feed supplement as well as a component of plastics, adhesives, finishes and paper and textile treatment.

(B) Methanol -- Methanol can be produced from hydrogen through adjusting the proportion of hydrogen and the oxides of carbon derived in the production of hydrogen in a so-called "synthesis gas". Methanol finds commercial application as an anti-freeze, in resins, explosives and clear plastics, among other uses.

(C) Oxo-alcohols -- From a synthesis gas of different composition alcohols are produced through reaction with olefins. The alcohols thus produced are employed in solvents and plasticizers.

(21) The End Products of Petroleum Production -- The end products derived from petroleum are the result of one or more consecutive processes which may be generally described under the four general headings of refining operations, petrochemical operations, primary chemical processing and secondary chemical processing. No fixed classification is possible for many processes since the processing in many cases is continuous and

the separation of one process from the next, while helpful to an understanding of the overall processing, is somewhat arbitrary. The principal groups of end products and the processes through which they are derived may be summarized as follows:

(a) Fuel and lubricants -- Both from the refining operations and from the subsequent petrochemical operations fuel and lubricants are obtained for gasoline and diesel vehicles, airplanes and marine vessels, home heating oil and oil for industrial processes requiring the sustained generation of heat.

(b) Fabricated plastics -- In the fabrication of plastic products, two major categories of products are commonly identified:

(i) Heat workable plastic products include phonograph records, plastic toys, vinyl flooring, artificial leather and automobile upholstery. The polyvinyl chloride (PVC), polyethylene and polypropylene resins which are the common source of such products are the culmination of a series of processing steps concluded in secondary chemical processing.

(ii) Heat resistant plastic products include electrical appliance parts, electric switch and control hardware, and cookware handles. The phenolic resin (Phenol formaldehyde polymer) which is one common source of these products is similarly the culmination of a series of processing steps concluded in secondary chemical processing.

(c) Rubber products -- Synthetic rubber is the result of secondary chemical processing commonly employing the butadiene and styrene produced in petrochemical and primary chemical processing. Synthetic rubber is used today in the manufacture of motor vehicle tires and tubes, rubber gaskets and various hose and tubing applications.

(d) Fabrics -- Nylon and polyester fibers are both derived from petroleum. Nylon for spinning and weaving results from the secondary chemical processing of adipic acid which in turn is derived from cyclohexane produced in petrochemical operations. Polyester is the product of the secondary chemical processing of Terephthalic acid which in turn is derived from para-xylene produced in petrochemical operations. Polyolefins are also produced as a fiber for similar uses by polymerization of ethylene or propylene.

(e) Industrial chemicals -- The broad range of organic chemicals used in industry are obtained at all four stages of the processing of petroleum. Some are by-products of basic refining operations. As the variety of products proliferates in the succeeding petrochemical operations and the primary and secondary chemical processing, there are hundreds of chemicals available for industrial use.

(f) Agricultural chemicals -- Fertilizers, pesticides and insecticides can all be derived from petroleum. Petrochemical operations produce basic fertilizers and subsequent chemical processing

multiplies the types of product available and result in the production of many of the commonly employed pesticides and insecticides.

(g) Drugs, cosmetics and detergents -- These consumer products, which in some instances have industrial applications, are the result of a series of processing steps from refining to secondary chemical processing.

(h) Paints, dyes and finishes -- These products have important industrial applications and are also important consumer items. A few products can be derived from petrochemical operations, but the majority are the result of both primary and secondary chemical processing after which they are combined with raw materials from other than petrochemical sources in the manufacture of the ultimate products.

(22) Summary of the Petroleum and Petrochemical Business --

(a) Exploration for and production of crude oil -- After the exploration for and establishment of a proven reserve, development wells are drilled and gathering systems are built to provide for the handling of crude oil produced from the wells. Production of crude oil generally commences when field development is only partially complete as soon as sufficient surface facilities are complete to permit shipment of the oil. The oil as produced from the well, together with gas and water found with the oil, is conveyed through a "flowline" from the well-head to a "gathering center". Facilities at the

"gathering center" generally handle production from several wells.

(b) Separation of crude oil from gas and other substances -- Oil as produced varies considerably from field to field in the physical characteristics of the crude oil itself and in the amounts and quality of gas and salt water produced with it. The size and nature of the plant required for processing to prepare crude oil and gas for shipment depend on the volume of gas and water found with the oil and the pressure of the produced mixture at the wellhead. A crude with little gas in it can be passed directly into a "flow tank" or separator operating at approximately atmospheric pressure in which the separation of gas from the crude oil can take place in a single operation or stage. High pressure crude with a high gas/oil ratio must be passed through a "multi-stage separation" to minimize loss of compounds with a low boiling temperature in the produced gas and loss of oil through formation of a finely divided oil spray and its entrainment in the produced gas. In this method, the produced mixture passes through a number of steel vessels connected in series with a successive reduction of pressure and removal of part of the gas from each vessel. Produced gas may be transported by pipeline for sale or used as an energy source for oilfield activities. Valuable liquid components in the gas may be separated in a gas processing plant. In many cases, salt water in the crude would occupy

vital space in storage and transport facilities and would also cause grave corrosion problems in the refinery. It is therefore necessary to reduce the salt water content to an acceptable level before the oil is transported to the refinery. Some water separates freely from the crude oil and is drained off at the gathering station. In the event water is present as a water-in-oil emulsion, the microscopic droplets of water are separated in a dehydration plant where by heating and addition of chemicals or by passing the crude oil between electrodes with an induced electrical field, coalescense of the water is promoted and it is then separated by density difference.

(c) Transportation of crude oil to the refinery -- After the initial separation of gas and salt water from the crude oil at the gathering center, the crude oil is transported to the refinery. This transportation may be accomplished by pumping it directly by pipeline to the refinery, or by pipeline to a marine terminal, for loading on a tanker for transportation to another terminal, for off-loading and further transportation to the refinery. In certain oil production areas, terrain or other factors may require use of truck or rail transport where economically feasible.

(d) Refining and further processing -- After the refining and further processing of petroleum into primary, intermediate and final products, as described in paragraphs (17), (18), (19) and (20),

the various products proceed through a variety of distribution channels. It is a unique feature of petroleum and petrochemical products, that the product is normally unseen and contained continuously in pipes, tanks, processing equipment and storage facilities from the time it leaves the producing formation in the ground until it reaches the point of consumption after final processing.

(e) Marketing and distribution of products -- The marketing of oil and petrochemical products involves a widely diverse system of sale and distribution.

(i) Automotive fuel and lubricants reach the consumer through the service station outlets which are the most visible part of the marketing of products. To reach the service station it is frequently necessary for the products to be transported over large distances following final processing by sea, pipeline, rail and road with intermediate storage en route. Shorter distances between production facilities and consumer outlets reduces transportation costs and give the seller a price advantage over competitors with greater transportation costs.

(ii) Aviation fuel has undergone dramatic change in recent years to meet the requirements of modern jet engines. The change from piston engines to the jet engine has required a change in fuel specification and properties, not in quality. The piston engine utilized a high octane number gasoline type fuel while

the jet engine is designed to utilize fuels ranging from gasoline to kerosine. Most commercial aviation jet fuel is a kerosine type material with special specifications for freezing point, cleanliness and chemical composition. Octane number is not a part of the specifications for jet engine fuel. Actually, the most desirable jet engine fuels have a low octane number, just the reverse of piston engine fuels. These changes in aviation fuels would be of little consequence had they been without parallel progress in the design of special equipment for fuel storage and movement of the product from refinery to aircraft. Stringent controls of quality are maintained at all stages to protect against the delivery of off-specification or contaminated fuel which might contribute to inflight power failure.

(iii) Marine fuels range from gasoline and diesel fuel for smaller vessels to vast quantities of bunker oils for large ships. These products are delivered from facilities ranging from floating service stations to chains of bunkering installations at ports around the world to service ships in marine commerce.

(iv) Industrial consumption of petroleum products is large in terms of volume, accounting for more than half the total output of products from refineries in many countries. The industries range from the production of steel and lipsticks, to road haulage and the construction of houses and

harbors. Energy in the form of fuel represents the largest percentage of an oil company's trade with manufacturers. A wide range of lubricants is also marketed. Large quantities of lubricating oils are required in metal-working processes but the highly specialized grades used, for example, in watch-making can be measured in pints. The rubber and cosmetics industries both require process oils, with an automotive tire containing a significant percentage of its weight in process oil. The principal feature of this industrial market is the relatively small number of customers with individualized requirements for "made to specification" products for use in part of a chemical manufacturing process.

(v) Fuels and lubricants for tractors and other mechanized implements constitute the major share of agricultural markets for petroleum products. Fuels for heating, crop drying and flame cultivation, petroleum-derived fertilizers, soil stabilizers, pesticides and now even protein feeds for animals are parts of the consumption of petroleum products in connection with farming.

(vi) Bulk sales of most kinds of petroleum products are made by refiners outside the other established distribution channels to independent marketers, who have their own particularly large consumers (such as chemical companies, power stations, cement plants and mining enterprises) and other oil companies.

Contentions of the Parties

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

PRUDENTIAL OIL CORPORATION, :

Plaintiff, :

-against- : 67 Civ. 3748 (CLB)

PHILLIPS PETROLEUM COMPANY, :

Defendant. :

- x

STATEMENT OF THE ISSUES TO BE TRIED

(1) Whether Prudential New York is the proper party in interest and has standing to assert the claims set forth in the complaint.

(2) Whether there was a legally enforceable joint venture created between Phillips and Prudential Connecticut relating to a petrochemically-oriented refinery in Puerto Rico. If so, what were its terms, who were the parties thereto, and was it terminated or breached at any time?

(3) Whether Prudential Connecticut in furtherance of any joint venture created between it and Phillips assumed any obligation, participated in any material manner in obtaining the necessary change in the Oil Import Control Program of the United States, made any material contribution to the planning, financing or construction of the petrochemical facility in Puerto Rico known as Phillips Puerto Rico Core, Inc. or made any other material contribution to the furtherance of any such joint venture.

(4) Whether Prudential Connecticut conceived, formulated, or developed any legally protected concept or material relating to a petrochemically-oriented refinery in Puerto Rico.

(5) Whether Prudential Connecticut disclosed to Phillips any legally protected concept or material relating to a petrochemically-oriented refinery in Puerto Rico in reliance upon a material misrepresentation by Phillips.

(6) Whether Prudential Connecticut disclosed to Phillips any legally protected concept or material relating to a petrochemically-oriented refinery in Puerto Rico as a result of a relationship of trust and confidence between Prudential Connecticut and Phillips.

(7) Whether Phillips appropriated any legally protected concept or material conceived, formulated or developed by Prudential Connecticut relating to a petrochemically-oriented refinery in Puerto Rico which Phillips utilized in a material way in the development and establishment of the petrochemical facility in Puerto Rico known as Phillips Puerto Rico Core, Inc.

(8) Whether Prudential Connecticut refrained from specific actions which it otherwise would have taken in reliance upon misrepresentations by Phillips from which forebearances Phillips derived a material benefit in the development and establishment of the petrochemical facility in Puerto Rico known as Phillips Puerto Rico Core, Inc.

(9) Whether Prudential New York commenced this action an unreasonable length of time after it or Prudential Connecticut or Prudential Delaware acquired notice of material facts giving rise to the claim in the complaint and whether the prosecution of this action at such time causes such injury and prejudice to Phillips that Prudential New York is not entitled to maintain this action.

(10) Whether Prudential New York is entitled to specific performance by Phillips of any joint venture agreement between Phillips and Prudential Connecticut in regard to the development of a petrochemically-oriented refinery in Puerto Rico. If so, to what specific performance is Prudential New York entitled?

(11) Whether as a condition to any such specific performance Phillips is entitled to reimbursement from Prudential New York for Phillips' investment in the planning, financing and construction of the petrochemical facility in Puerto Rico known as Phillips Puerto Rico Core Inc.

(12) Whether Prudential New York is entitled to an order for an accounting to make a division between it and Phillips of all rights, properties, interests and assets relating to the petrochemical facility in Puerto Rico known as Phillips Puerto Rico Core, Inc.

(13) Whether Prudential New York is entitled to a judgment declaring Phillips to hold as trustee for Prudential New York the petrochemical facility in Puerto Rico known as Phillips Puerto Rico Core Inc.

(14) Whether Prudential New York is entitled to a judgment for damages by virtue of a breach by Phillips of any contract of joint venture between Prudential Connecticut and Phillips relating to the development and establishment of a petrochemically-oriented refinery in Puerto Rico. If so, how much?

(15) Whether Prudential New York is entitled to a judgment for damages by virtue of any misappropriation by Phillips, either through the breach of a confidential relationship or through deceit, to the benefit of Phillips and to the detriment of Prudential Connecticut, of any legally protected

concept or material relating to a petrochemically-oriented refinery in Puerto Rico. If so, how much?

(16) Whether Phillips is entitled to a judgment against Prudential New York dismissing the complaint in this action.

Stipulation dated December 19,1967

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

- x

PRUDENTIAL OIL CORPORATION, :

Plaintiff, :

v. :

PHILLIPS PETROLEUM COMPANY, :

Defendant. :

- x

A 100

STIPULATION

67 Civ. 3748

IT IS HEREBY STIPULATED AND AGREED between the parties by their respective attorneys that the deposition of the defendant herein by Mr. Stanley M. Learned, a director thereof, originally noticed for December 14, 1967, at the offices of Palmer & Serles, 62 William Street, New York, New York, 10005, be and the same hereby is adjourned to be held at the same place promptly upon the completion of the depositions of Messrs. N. M. Shippee, E. J. Willey, Thomas Young, John W. Little and William H. Wright at such date and time as may be mutually agreed upon between the attorneys for the respective parties.

Dated: New York, New York
December 19, 1967

SULLIVAN & CROMWELL

By _____
A Member of the Firm

Attorneys for Defendant

PALMER & SERLES

By _____
A Member of the Firm

Attorneys for Plaintiff

Answers to Defendant's Jurisdictional Interrogatories,

Sworn to April 26, 1971

ENTERED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 101

- -x

PRUDENTIAL OIL CORPORATION,

Plaintiff,

-against-

PHILLIPS PETROLEUM COMPANY,

Defendant.

- -x

67 Civil 3748 (DNE)

ANSWERS AND OBJECTIONS TO INTERROGATORIES

Plaintiff PRUDENTIAL OIL CORPORATION, reserving all objections to relevancy and materiality of defendant's interrogatories dated January 22, 1971, to any issue in this case or any part thereof, hereby answers said interrogatories. Answers to interrogatories herein are without waiver or prejudice to any objections to any interrogatory objected to, in whole or in part. Answers herein contain the best information available to plaintiff, which reserves the right to amend or supplement these answers as and when it has other or more accurate information. Plaintiff also reserves all objections as to burden, vagueness and privilege and objects to any interrogatory which calls for attorney's work product, privileged communications or materials prepared in anticipation of litigation.

Interrogatory 1. Attached is a copy of a draft complaint in the Supreme Court of the State of New York in a proposed action entitled, "Prudential Oil Corporation, Plaintiff, v. Phillips Petroleum Company, Defendant," which has previously been marked as Defendant's Exhibit 222 for identification. With respect to this draft complaint, please state

BEST COPY AVAILABLE

(a) the approximate date when it was prepared;

(b) by whom it was prepared;

(c) to whom it was exhibited after its preparation;

(d) what use, if any, was made of the document; and

(e) whether or not such an action was ever instituted by Prudential Oil Corporation, a Delaware corporation ("Prudential Delaware"); if so, when.

Answer: Plaintiff objects to this interrogatory on the ground that it calls for the work product of attorneys, materials prepared for litigation and privileged attorney-client communications. The present corporate name of "Prudential Delaware" is Prudential Resources Corp. (hereafter "Prudential Delaware"). In specific response to interrogatory 1 (e), the answer is no.

Interrogatory 2. Attached is a copy of a draft complaint in the Supreme Court of the State of New York in a proposed action entitled, "Prudential Oil Corporation, Plaintiff, v. Phillips Petroleum Company and Oscar L. Chapman, Defendants," which has previously been marked as Defendant's Exhibit 221 for identification. With respect to this draft complaint, please state

(a) The approximate date when it was prepared;

(b) by whom it was prepared,

(c) to whom it was exhibited after its preparation;

(d) what use, if any, was made of the document; and

(e) whether or not such an action was ever instituted by Prudential Delaware; if so, when.

Answer: Plaintiff objects to this interrogatory on the ground that it calls for the work product of attorneys, materials prepared for litigation and privileged attorney-client communications. In specific response to interrogatory 2 (e), the answer is no.

Interrogatory 3. It is alleged in paragraph 1 of the complaint in this action that plaintiff Prudential Oil Corporation is a New York corporation, having its principal place of business in New York, New York. Please state

(a) the date of incorporation of Prudential Oil Corporation, the New York corporation ("Prudential New York");

(b) specify the lines of business, if any, in which Prudential New York has actually engaged since its incorporation,

(c) the individuals responsible for the conduct of each line of business and their respective duties;

(d) the dollar volume of the business transacted in each such line, and

(e) describe with particularity any business actually transacted by Prudential New York from the date of its incorporation to the date of the institution of this action.

Answer:

(a) July 12, 1966.

(b) The sale business of Prudential New York is the prosecution of this action to recover its property rights and business wrongfully appropriated by defendant.

(c) - (e) Not applicable; see answer to 3 (b) above.

Interrogatory 4: Please identify each of the books and records maintained by or on behalf of Prudential New York, stating the person or persons responsible for maintaining such books and records, who has custody of each such book or record and where they are located.

Answer: Prudential New York's corporate records consist of a corporate minute book, including its Certificate of Incorporation, By-Laws and minutes of meetings of incorporators and directors, and its tax returns. All of the books and records of the corporation are in the custody of Patricia Morel at the offices of the corporation, 1 New York Plaza, New York, New York.

Interrogatory 5. Please identify each of the books and records maintained by or on behalf of Prudential Delaware, stating the person or persons responsible for maintaining such books and records, who has custody of each such book or record and where they are located.

Answer: "Prudential Delaware" maintains the normal corporate books and records customarily maintained by an operating corporation, including corporate minute book, cash disbursement ledger, cash receipts ledger, general ledger and tax records. These books are in the custody of Patricia Morel at the offices of the corporation, 1 New York Plaza, New York, New York.

Interrogatory 6. Please list individually and specify each of the assets held by Prudential New York immediately following its incorporation and any transfers to it in July 1966 by Prudential Delaware.

Answer: All rights and claims of Prudential Delaware with respect to a joint venture with Phillips Petroleum Company and with respect to the promotion, financing and development of petrochemical companies relating to or associated

with the joint venture with Phillips Petroleum Company, together with the use of the name Prudential Oil Corporation.

Interrogatory 7: Please list individually and specify any assets received by Prudential New York after July 13, 1966 and prior to the institution of this action and each asset of Prudential New York held at the time of the institution of this action.

Answer: See answer to 6 above.

Interrogatory 8: Please list individually and specify each liability assumed, incurred or imposed upon Prudential New York immediately following its incorporation in July 1966.

Answer: Prudential New York assumed any obligations of Prudential Delaware with respect to the joint venture with Phillips Petroleum Company referred to in answer to 6 above.

Interrogatory 9. Please list individually and specify each liability assumed, incurred or imposed upon Prudential New York after July 13, 1966 and prior to the institution of this action.

Answer: See answer to 8 above.

Interrogatory 10: Please list individually and specify each liability of Prudential New York at the time of the institution of this action.

Answer: See answer to 8 above.

Interrogatory 11: Did Prudential New York itself ever retain counsel to prosecute this action on its behalf? If so, please state

(a) when such counsel was first retained, the name of the individual or individuals who acted for plaintiff with respect to the retention of counsel and the capacity in which any such individual or individuals acted:

(b) who was the counsel retained;

(c) the period for which counsel was retained; and

(d) whether plaintiff has at any time made any payment whatsoever to counsel in connection with the prosecution of this action, giving the date, amount and purpose of any such payment.

Answer: Prudential New York's parent corporation, Prudential Delaware, by resolution of its Board of Directors at a meeting held on October 3, 1966, authorized the officers of Prudential Delaware to commence an action in behalf of Prudential Oil Corporation, a New York corporation, and also authorized said officers to retain counsel in connection therewith. Pursuant to said resolutions, the firm of Robert F. Conrad of Washington, D. C. and Palmer, Serles, Delaney & Shaw of New York, New York, were retained by officers and counsel of Prudential New York and Prudential Delaware. The firm of Robert F. Conrad was retained on or about April 30, 1966, by Nathan M. Shippee on behalf of Prudential New York and Prudential Delaware as an officer of both corporations, and the firm of Palmer, Serles, Delaney & Shaw was retained by Burton M. Abrams, counsel for said corporations on or abcut February 3, 1967. Both firms were retained for the duration of the instant litigation. Plaintiff

objects to furnishing any answer to interrogatory 11 (d) on the ground that the information sought by this interrogatory comes within the protection of attorney-client privilege.

Interrogatory 12. With respect to any retainer of counsel by Prudential New York referred to in the answer to interrogatory 11, please state

(a) what action, if any, Prudential Delaware took with respect to such retention of counsel and with respect to the prosecution of this action;

(b) what undertaking, if any, Prudential Delaware gave to any such counsel and whether there exists any arrangement between such counsel and Prudential Delaware with respect to counsel's compensation;

(c) the name of the individual or individuals who acted for Prudential Delaware with respect to the consummation of any arrangement between such counsel and Prudential Delaware and the capacity in which any such individual or individuals acted; and

(d) whether Prudential Delaware has at any time made any payment whatsoever to counsel in connection with the prosecution of this action, giving the date, the amount and the purpose of any such payment.

Answer: See answer to 11 above. In addition, Prudential Delaware's Executive Committee, by resolution adopted on September 11, 1967, ratified, confirmed, approved and adopted the retention of the law firm of Robert F. Conrad of Washington, D.C. and Palmer, Serles, Delaney & Shaw to work with the office of Burton M. Abrams, counsel for the corporation for the purpose of commencing an action against

Phillips Petroleum Company in order to recover the property rights of Prudential Delaware in and to the petrochemical complex in Puerto Rico presently administered by Phillips Petroleum Company. Plaintiff objects to furnishing any answer to interrogatory 12 (d) on the ground that the information sought by this interrogatory comes within the protection of attorney-client privilege.

Interrogatory 13. Please state what consideration, if any was given by Prudential New York to Prudential Delaware in exchange for the alleged assignment to Prudential New York of the claim asserted in this action, stating the nature of any such consideration, the date any such consideration was given, its value when given and, if identifiable in September 1967, its value at the date of the commencement of this action.

Answer: The consideration given by Prudential New York to Prudential Delaware in exchange for the assignment to Prudential New York of the claim asserted in this action consisted of the exchange of all of the issued and outstanding capital stock of Prudential New York and the assumption by Prudential New York of all obligations of Prudential Delaware with respect to a joint venture with Phillips Petroleum Company and with respect to the promotion, financing and development of petrochemical companies relating to or associated with the joint venture with Phillips Petroleum Company. This consideration was given on or about June 29, 1966, and the value of said consideration could not be measured with any degree of certainty at the time it was given nor at the time of the commencement of this action, although the officers and directors of both corporations considered said consideration to be of great value.

Interrogatory 14. Has Prudential Delaware retained

any control over or right to control the prosecution of this action or retained any financial interest in any recovery from this action? If so, please state

(a) The nature of Prudential Delaware's right to control the prosecution of this action identifying any agreement by which such control or right to control is retained and whether it is oral or in writing, its terms and when it was entered into; if it is in writing, identify any documents constituting or evidencing such agreement;

(b) the nature of Prudential Delaware's interest in any recovery from this action, the extent thereof and identify any agreement by which such interest is retained and whether it is oral or in writing, its terms and when it was entered into; if it is in writing, identify any documents constituting or evidencing such agreement;

(c) the name of the individual or individuals who acted for Prudential Delaware with respect to the consummation of any arrangement between Prudential New York and Prudential Delaware relating to Prudential Delaware's control over the prosecution of this action and its interest in any recovery.

Answer: No, except to the extent that as Prudential New York is a wholly owned subsidiary of Prudential Delaware, the value of Prudential Delaware's holdings in Prudential New York will be increased to the extent of the amount of any recovery had in this action.

Interrogatory 15. What portion of any judgment recovered in this action has Prudential New York agreed or is it otherwise obligated to turn over to others? Please state

(a) to whom Prudential New York is obligated to turn over any portion of a judgment recovered in this action;

(b) what portion Prudential New York is obligated to turn over to each of the persons named in the answer to (a) of this interrogatory.

(c) the date of any agreement pursuant to which plaintiff is obligated to turn over any portion of such judgment, whether it is oral or in writing, if it is in writing, identify any documents constituting or evidencing such agreement.

Answer: No portion.

Interrogatory 16. With respect to a judgment entered against Prudential New York in this action, what portion, if any, of the legal fees, costs and expenses of the prosecution of this action, would Prudential New York have to bear? Please state who else would be obligated, by agreement or otherwise, to bear any portion of such legal fees, costs and expenses and what portion, if any, such person or corporation would be obligated to bear.

Answer: The entire portion.

Interrogatory 17. Please state what office Nathan M. Shippee held in Prudential Delaware in July 1966 at the time of the incorporation of Prudential New York, whether he continued to occupy that office at the time of the institution of this action, and the period for which he served as a director of Prudential Delaware.

Answer: President and director from July, 1966 (and prior thereto) to date.

Interrogatory 18. Please list each of the officers, directors and stockholders of Prudential New York from July 1966 to the date of the institution of this action indicating for each officer the office held and for each stockholder the number of shares held.

Answer: The officers and directors of Prudential New York from July, 1966 to the date of the institution of this action were Nathan M. Shippee, President, and Patricia Morel, Secretary. The stockholder of Prudential New York for the same period is Prudential Delaware.

Interrogatory 19. Does Prudential Delaware continue to exist as a corporation under Delaware law?

Answer: Yes.

Interrogatory 20. Please identify with particularity any line of business engaged in by Prudential Delaware prior to July 1966 in which it thereafter ceased to engage as a result of any transfer of assets or otherwise to Prudential New York in July 1966.

Answer: The activities of Prudential Delaware with respect to the joint venture with defendant.

Interrogatory 21. Describe the lines of business engaged in by Prudential Connecticut from its incorporation to its dissolution indicating

(a) the period during which each particular line of business was conducted;

(b) the individuals responsible for the conduct of each line of business on behalf of Prudential

Connecticut and their respective duties; and

(c) the dollar volume of the business transacted in each such line.

Answer: The specific nature of the business engaged in by Prudential Connecticut during its legal existence was the management of venture capital employed in the development of natural resources. Under the provisions of its charter, Prudential Connecticut was authorized:

> "To act as agent and attorney-in-fact for investors groups in investing in oil and gas leases and drillings thereon. To act as operator in the drilling and maintenance of oil and gas wells; to keep records of all such operations and expenditures and income and to report such to said investors groups; and to investigate leases, other operators, drillings, gas pipeline company meters, oil storage supplies at flowing wells, etc., on behalf of the interest of said investors groups. Otherwise to maintain complete investment, investigative and reporting services for said investors groups.
>
> Further, on its own behalf or on behalf of others, to buy, sell, own, mortgage, lease, option, farm out or otherwise deal in non-productive or productive oil and gas or other mineral, farm, ranch or commercial properties. To conduct geological or geophysical exploration for gas, oil or minerals and to manage, drill or operate flowing wells. To buy, sell, lease or otherwise deal in pipelines or other oil or gas storage facilities. To deal in any matters ordinarily dealt in by oil, gas and mineral operators, drillers, producers, geologists and investment companies.
>
> In general, to buy, sell, own, mortgage, option, lease, manage or otherwise deal in personal property and realty of all kinds."

The individuals responsible for the conduct of said business were the officers of Prudential Connecticut, consisting of Nathan M. Shippee, Chairman of the Board and Treasurer, Edward J. Willey, Counsel, Philip H. McLaughlin, Vice President and Secretary, Patricia R. Morel, Assistant Secretary, and Thomas L. Wilkerson, Vice President, being the officers of Prudential Connecticut at the time of its dissolution on June 30, 1965. Plaintiff objects to furnishing information with respect to interrogatory 21 (c) on the ground that such information is

completely irrelevant to the issues in this action.

Interrogatory 22. Describe the lines of business engaged in by Prudential Delaware from its incorporation to the date of the institution of this action indicating

(a) the period during which each particular line of business was conducted;

(b) the individuals responsible for the conduct of each such line of business on behalf of Prudential Delaware and their respective duties; and

(c) the dollar volume of the business transacted in each such line.

Answer: The lines of business carried on by Prudential Delaware are substantially similar to those that were carried on by Prudential Connecticut. See answer to 21 above. The individuals responsible for the conduct of said business are the officers of Prudential Delaware which, as of the date hereof, are as follows: Nathan M. Shippee, Chairman of the Board, President and Treasurer, C. Hayden Atchison, Senior Vice President, Winston S. McAdoo, Financial Vice President and Assistant Secretary, Patricia E. Morel, Assistant Secretary, and Raymond J. Kerester, Executive Vice President and Secretary. Plaintiff objects to furnishing information with respect to interrogatory 22 (c) on the ground that such information is completely irrelevant to the issues in this action.

Interrogatory 23. When was the certificate of dissolution of Prudential Connecticut filed?

Answer: November 12, 1965.

Interrogatory 24. Attached is a copy of a document previously marked Defendant's Exhibit 44U for identification,

which purports to be a carbon copy of a letter dated January 25, 1965 from Nathan M. Shippee to W. H. Wright. With respect to this letter, please state

(a) whether the original of this letter was sent or delivered to W. H. Wright and, if so, when, by whom and in what manner;

(b) whether a copy of this letter was shown, given, sent or delivered to anyone other than W. H. Wright and, if so, when, by whom and in what manner;

(c) the nature of "the petrochemical plant proposed for Puerto Rico" to which the letter refers specifying the principal raw materials it was proposed it would use, the process or processes of manufacture it would employ and the product or products it would produce;

(d) who were the persons who had proposed this "petrochemical plant", specifying when, in what manner and identifying any documents in which such proposal is described, projected or explained;

(e) when, where and in what manner the "agreement" was made to which the first paragraph of the letter refers; if oral, identify each person present; if in writing, identify each document constituting a part of or evidencing the "agreement";

(f) each of the parties to the "agreement" stated to be confirmed by the letter;

(g) whether any subsequent "commitments" or "undertakings" were made to any person, as anticipated in the second paragraph of the letter; if so, when, by whom, to whom, the nature and terms thereof, whether oral or in

writing and, if in writing, identify each document constituting a part of or evidencing such "commitment" or "undertaking";

(h) the date of the "'back-to-back' contract" described as "(a)ttached" to the letter, the parties thereto, by whom it was signed for each party and the present location of any executed copies thereof;

(i) with respect to the "present objective" referred to in the third paragraph of the letter, from whom and by whom was it intended to attempt to obtain a letter, the content of such a letter and the parties thereto;

(j) whether Prudential Connecticut, Prudential Delaware or Prudential New York was or is a party to or had or has any interest in or obligation under the "agreement" referred to in the first paragraph of the letter, identifying with particularity each of the corporations which was or is involved, the nature and extent of any such interest or obligation and when and by what means it was obtained or assumed by that corporation, specifying any documents referring or relating thereto;

(k) whether Prudential Connecticut, Prudential Delaware or Prudential New York was or is a party to or had or has any obligation with respect to any "commitment" or "undertaking" referred to in the answer to subdivision (g) of this interrogatory, identifying with particularity which of the corporations was or is involved, the nature and extent any such obligation and when and by what means it was assumed by that corporation, specifying any documents referring or relating thereto; and

(l) whether Prudential Connecticut, Prudential

Delaware or Prudential New York was or is a party to or had or has any interest in the "'Back-to-back' contract" referred to in the third paragraph of the letter, identifying with particularity each of the corporations which was or is involved, the nature and extent of any such interest and when and by what means it was obtained by that corporation, specifying any documents referring or relating thereto.

Answer: The answers to this interrogatory are based on the best recollection of Mr. Nathan M. Shippee, who was the author of Defendant's Exhibit 44U for identification.

(a) The original of Defendant's Exhibit 44U for identification was hand delivered by Nathan M. Shippee to the offices of W. H. Wright in the afternoon of January 25, 1965.

(b) Copies of Defendant's Exhibit 44U for identification were received by Messrs. Anderson, Willey and Shippee. Plaintiff is not certain whether copies of said Exhibit were hand delivered or mailed to Messrs. Anderson and Willey. Mr. Shippee retained a copy for his files at the time he authored the letter.

(c) The term "the petrochemical plant proposed for Puerto Rico" referred to a core plant proposed for Puerto Rico and the satellite plants which would be erected in connection with said core plant.

(d) A proposed venture regarding a petrochemical facility in Puerto Rico was brought to the attention of Nathan M. Shippee in 1962. It is believed that the project was initially proposed by J. P. Coan of Omega Management in conjunction with the efforts of Oscar L. Chapman. These initial efforts were brought to the

attention of Nathan M. Shippee through the offices of E. M. Warburg and Company. The documents referring to said petrochemical facility have been previously furnished to defendant.

(e) The agreement was made in the airport in Tulsa, Oklahoma, and was oral in nature. The parties to said agreement at that time and place consisted of Edward Willey, W. H. Wright and Nathan M. Shippee.

(f) The parties to the agreement were as set forth in Defendant's Exhibit 44U for identification. See answer to (e) above.

(g) No.

(h) Unknown.

(i) A back-to-back contract for a PVC project was being sought from Phillips Petroleum Company, "the Kugler group" and perhaps Hooker Chemical Company. No such letter was obtained.

(j) Yes; Prudential Connecticut, Prudential Delaware and Prudential New York were and are parties to and have an interest in said agreement. Initially, Prudential Connecticut, in 1962 and thereafter to its dissolution in 1965, maintained an interest in said agreement which was assumed by Prudential Delaware, successor in interest and assignee of the entire business assets and properties of Prudential Connecticut, and thereafter Prudential New York as assignee of all the right, title and interest to Prudential Delaware's claims against Phillips Petroleum Company as asserted in the complaint herein. The documents referring to said interests have been previously furnished to defendant.

(k) See answer to (j) above.

(l) Unknown.

Interrogatory 25. Attached is a copy of a document previously marked Defendant's Exhibit 44T for identification, which purports to be a carbon copy of a letter dated January 25, 1965 from Nathan M. Shippee to William H. Wright. With respect to this letter, please state

(a) whether it was prepared before, after or at the same time as Defendant's Exhibit 44U for identification;

(b) whether the original of this letter was sent or delivered to William H. Wright and, if so, when, by whom and in what manner and whether before, after or at the same time as Defendant's Exhibit 44U for identification;

(c) whether a copy of this letter was shown, given, sent or delivered to anyone other than William H. Wright and, if so, when, by whom and in what manner;

(d) the nature of "the petrochemical plant proposed for Puerto Rico" to which the letter refers specifying the principal raw materials it was proposed it would use, the process or processes of manufacture it would employ and the product or products it would produce;

(e) who were the persons who had proposed this "petrochemical plant", specifying when, in what manner and identifying any documents in which such proposal is described, projected or explained;

(f) when, where and in what manner the "agreement" was made to which the first line of the letter refers;

if oral, identify each person present, if in writing, identify each document constituting a part of or evidencing the "agreement";

(g) each of the parties to the "agreement" stated to be confirmed by the letter;

(h) each of the differences in terms between the "agreement" referred to in this letter and the "agreement" referred to in the first paragraph of the letter marked as Exhibit 44U for identification;

(i) whether any "rewards" to any "participating parties" were ever "approved as to amount and participation" by the four persons referred to as "we four" in the letter; if so, when, to whom, the nature and terms thereof, whether oral or in writing and, if in writing, identify each document constituting a part of or evidencing such "reward" or such approval;

(j) the nature and extent of the "undertaking" referred to on the last line of the letter and the name of each person or entity who at any time participated therein, identifying any document in which such undertaking is described, proposed or explained;

(k) the difference, if any, between the "undertaking" referred to on the last line of the letter and the proposal for a "petrochemical plant" referred to in Defendant's Exhibit 44U for identification;

(l) whether Prudential Connecticut, Prudential Delaware or Prudential New York was or is a party to or had or has any interest in or obligation under the "agreement" referred to in the first line of the letter,

identifying with particularity each of the corporations which was or is involved, the nature and extent of any such interest or obligation and when and by what means it was obtained or assumed by that corporation, specifying any documents referring or relating thereto;

(m) whether Prudential Connecticut, Prudential Delaware or Prudential New York was or is a party to or had or has any obligation with respect to any "rewards" or approval thereof referred to in the answer to subdivision (i) of this interrogatory, identifying with particularity which of the corporations was or is involved, the nature and extent of any such obligation and when and by what means it was assumed by that corporation, specifying any documents referring or relating thereto; and

(n) the reasons why two separate letters (Defendant's Exhibit T and U for identification were written to W. H. Wright by N. M. Shippee on January 25, 1965, one addressed to Mr. Wright in New York City and one in Greenwich, Connecticut, and one referring to a "Phillips project" and one containing no such specific reference.

Answer: The answers to this interrogatory are based on the best recollection of Mr. Nathan M. Shippee, who was the author of Defendant's Exhibit 44T for identification.

(a) Unknown. Presumably Defendant's Exhibit 44T for identification was prepared about the same time as Defendant's Exhibit 44U.

(b) The original of Defendant's Exhibit 44T for identification was hand delivered by Nathan M. Shippee to the offices of William H. Wright in the afternoon of January 25, 1965.

(c) Copies of Defendant's Exhibit 44T for identification were received by Messrs. Anderson, Willey and Shippee. Plaintiff is not certain whether copies of said Exhibit were hand delivered or mailed to Messrs. Anderson and Willey. Mr. Shippee retained a copy for his files at the time he authored the letter.

(d) The term "the petrochemical plant proposed for Puerto Rico" referred to a core plant proposed for Puerto Rico and the satellite plants which would be erected in connection with said core plant.

(e) A proposed venture regarding a petrochemical facility in Puerto Rico was brought to the attention of Nathan M. Shippee in 1962. It is believed that the project was initially proposed by J. P. Coan of Omega Management in conjunction with the efforts of Oscar L. Chapman. These initial efforts were brought to the attention of Nathan M. Shippee through the offices of E. M. Warburg and Company. The documents referring to said petrochemical facility have been previously furnished to defendant.

(f) The agreement was made in the airport in Tulsa, Oklahoma, and was oral in nature. The parties to said agreement at that time and place consisted of Edward Willey, W. H. Wright and Nathan M. Shippee.

(g) See answer to (f) above.

(h) Mr. Shippee's best recollection is there were no differences in his understanding the term "agreement" as used in both letters.

(i) No "rewards" were "approved as to amount and participation" by the individuals referred to in said letter.

(j) The "undertaking" referred to the establishment of a petrochemical facility in Puerto Rico, including a core plant and satellite plants to be erected in connection therewith.

(k) Mr. Shippee's best recollection is there were no differences in his understanding of the term "undertaking" and the proposal for the establishment of a petrochemical facility in Puerto Rico.

(l) Yes;see answer to Interrogatory 24 (j).

(m) See answer to Interrogatory 24 (j).

(n) To the best of Mr. Shippee's recollection he wrote the two letters to reflect his interest as an individual as well as Prudential's interest through Mr. Shippee. Mr. Shippee's individual interest in the project was for the benefit of Prudential.

Interrogatory 26. Attached is a copy of a document previously marked Defendant's Exhibit 55 for identification, which purports to be a carbon copy of a letter dated October 4, 1966 from Nathan M. Shippee to Edward J. Willey. With respect to this letter, please state

(a) whether the original of this letter was sent to Edward J. Willey on or about October 4, 1966;

(b) whether a copy of this letter was shown, given, sent or delivered to anyone other than Edward J. Willey; if so, to whom, when by whom;

(c) the nature of the claim asserted or to be asserted in "the Phillips suit" to which the letter

refers, indicating the full name of the plaintiff or plaintiffs, or prospective plaintiff or plaintiffs, the defendant or defendants, or prospective defendant or defendants and the relief sought or to be sought;

(d) indicate the full name and state of incorporation of the corporation referred to in the letter as "Prudential";

(e) indicate the full name and state of incorporation of the corporation whose directors are stated in the letter to have had a meeting on October 3, 1966 and to have "voted to proceed with the suit";

(f) whether the proposed percentages of "interest" referred to in the letter were the subject of any action by the directors or officers of Prudential Connecticut, Prudential Delaware or Prudential New York; if so, when, by whom and in what manner, identifying any documents referring or relating thereto;

(g) whether the "agreement" stated to be confirmed by Defendant's Exhibit 44U for identification had been modified or terminated prior to October 4, 1966; if so, state the action taken with respect to it, when, by whom and in what manner, identifying any documents referring or relating to such modification or termination;

(h) whether the "agreement" stated to be confirmed by Defendant's Exhibit 44T for identification had been modified or terminated prior to October 4, 1966; if so, state the action taken with respect to it, when, by whom and in what manner, identifying any documents referring or relating to such modification or termination;

(i) the reasons for reducing the percentage par-

ticipation of W. H. Wright from 25% in January 1965 to a suggested 5% in October 1966;

(j) the reasons for reducing the percentage participation of W. H. Wright from 25% in January 1965 to a suggested zero in October 1966;

(k) the reasons for reducing the percentage participation of W. J. Willey from 25% in January 1965 to a suggested 15% in October 1966;

(l) the reasons for increasing the percentage participation of "Prudential" from zero in January 1965 to a suggested 50% or even 65% in October 1965.

Answer:

(a) Yes.

(b) Unknown.

(c) The claims asserted in the present complaint against the defendant.

(d) Prudential Oil Corporation, a New York corporation, the plaintiff in this action.

(e) Prudential Resources Corp., a Delaware corporation and sole stockholder of Prudential Oil Corporation, a New York corporation, the plaintiff in this action.

(f) The minutes of the Board meetings of the corporations do not disclose any board action taken with respect to the proposed percentages of "interest" referred to in said letter.

(g) Unknown.

(h) Unknown.

(i) - (l) Unknown.

Interrogatory 27. Attached is a copy of a document previously marked Defendant's Exhibit 56 for identification, which purports to be a copy of a letter dated October 7, 1966 from E. J. Willey to Nathan M. Shippee. With respect to this letter, please state

(a) whether this letter was received by Nathan M. Shippee;

(b) whether Nathan M. Shippee at any time accepted the proposal of E. J. Willey contained in the letter that the percentage participation of E. J. Willey be reduced from 25% in January 1965 to 20%; if so, when, by what means, whether orally or in writing and if in writing, identify any documents constituting or evidencing such acceptance;

(c) whether at any time after October 7, 1966 papers were "drawn up" to record the percentage participations or interests of the various persons referred to in the letter in any suit against Phillips Petroleum Company, if so, identify any such documents.

Answer:

(a) Yes.

(b) No.

(c) No.

Interrogatory 28. Please identify each person who claims or has claimed any interest in the subject matter of this action or assets or has asserted the right to share in any recovery obtained herein, specifying the extent of the interest or share claimed by each; please identify any documents relating or referring to any such claims or assertions of right to share.

Answer: Prudential New York claims the entire interest in the subject matter of this action. Thomas Young, Edward J. Willey and others have claimed interests in the proposal to establish a petrochemical facility in Puerto Rico as outlined in the complaint. Documents referring to or relating to the claimed interests of others have been furnished to defendant. In addition, references to said claims are contained in transcripts of testimony executed by defendant in connection with the defense of this action.

Interrogatory 29. Has Robert B. Anderson ever directly or indirectly assigned to Prudential Connecticut, Prudential Delaware or Prudential New York any interest in the subject matter of this action or any claim against Phillips Petroleum Company? If so, when, to which corporation, by what means, orally or in writing? If in writing, identify any documents constituting or evidencing such assignment.

Answer: No.

Interrogatory 30. Has William H. Wright ever directly or indirectly assigned to Prudential Connecticut, Prudential Delaware or Prudential New York any interest in the subject matter of this action or any claim against Phillips Petroleum Company? If so, when, to which corporation, by what means, orally or in writing? If in writing, identify any documents constituting or evidencing such assignment.

Answer: No.

Interrogatory 31. Has E. J. Willey ever directly or indirectly assigned to Prudential Connecticut, Prudential Delaware or Prudential New York any interest in the subject matter of this action or any claim against Phillips Petroleum Company?

If so, when, to which corporation, by what means, orally or in writing? If in writing, identify any documents constituting or evidencing such assignment.

Answer: No.

Interrogatory 32. Has Nathan M. Shippee ever directly or indirectly assigned to Prudential Connecticut, Prudential Delaware or Prudential New York any interest in the subject matter of this action or any claim against Phillips Petroleum Company? If so, when, to which corporation, by what means, orally or in writing? If in writing, identify any documents constituting or evidencing such assignment.

Answer: Nathan M. Shippee has always acted on behalf of the Prudential corporations, of which he is and has been an officer and director.

Interrogatory 33. Has Prudential Connecticut, Prudential Delaware or Prudential New York ever directly or indirectly assigned to Nathan M. Shippee, E. J. Willey, T. R. Young, W. H. Wright, R. B. Anderson, or any one or more of them any interest in the subject matter of this action or any claim against Phillips Petroleum Company? If so, when (including the date of any action taken by the Board of Directors approving such transaction), to whom, by what means, orally or in writing? If in writing, identify any documents constituting or evidencing such assignment.

Answer: No.

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

A 128

NATHAN M. SHIPPEE, being duly sworn, states that he is President of PRUDENTIAL OIL CORPORATION, a corporation organized pursuant to the laws of the State of New York, the plaintiff herein; that he has read the foregoing answers and objections to defendant's interrogatories; and that said answers are true and correct to the best of his information and belief.

(Nathan M. Shippee)

Sworn to before me this 26th day of April, 1971.

Notary Public

NINA A. PARKER
Notary Public, State of New York
No. 31-8278630
Qualified in New York County
Commission Expires March 30, 1972

The foregoing objections to interrogatories are signed by

PALMER & SERLES

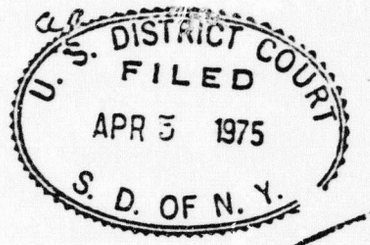
By _____
James P. O'Neill,
A Member of the Firm
Attorneys for Plaintiff
120 Broadway
New York, New York
962-5600

Dated: New York, N.Y.
April 16th, 1971

Opinion of Judge Edelstein April 4, 1975,

Denying Defendant's Motion to Strike Plaintiff's Jury Demand

A 130 ORIGINAL



#42260

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PRUDENTIAL OIL CORPORATION,

Plaintiff,

v.

PHILLIPS PETROLEUM COMPANY,

Defendant.

---

67 Civ. 3748

MEMORANDUM

EDELSTEIN, Chief Judge

Pursuant to Fed. R. Civ. P. 39(a) Defendant has moved this court for an order "striking plaintiff's demand for a jury trial in this action on the ground that under the Seventh Amendment to the United States Constitution, as implemented by Rule 38, F.R.C.P., plaintiff has no right to a jury trial in this action." Defendant's Notice of Motion at 1. Defendant does not object to the timeliness of Plaintiff's jury demand.

Plaintiff's complaint is extremely prolix; thus, for purposes of this memorandum, the court will attempt to deal with the facts as alleged in this complaint as succinctly and simply as it can.

Plaintiff is the assignee of the interest of a corporation that engaged primarily in oil exploration financing. Plaintiff alleges that the Economic Development Administration of Puerto Rico (EDA) desired the establishment of a petrochemical production facility on the Island of Puerto Rico in order to increase general economic growth of the Island. At the time that the operative events in this action occurred Puerto Rico already

MICROFILM
APR 07 1975

4-75

had two oil refineries. The project undertaken by the E.D.A. envisaged the construction of a third refinery with satellite petrochemical facilities to utilize the petroleum derivatives from the third refinery. The project was complicated from an economic, financial and political standpoint.

Plaintiff was brought into the transaction by E.D.A. on the recommendation of two New York City investment banking houses after the withdrawal from the initial promotion group of one of its active participants. Plaintiff undertook sponsorship of the project and as part of its activities Plaintiff entered into an arrangement with Defendant whereby Defendant would supply the crude oil for the project and purchase the refined products not used in the petrochemical operations. Allegedly, Defendant also undertook to furnish consultation in the design, construction and operation of the project. Attached as Exhibit A to the complaint is a letter from Defendant's President to Mr. N. M. Shippee, Chairman of Plaintiff, which states that in connection with the project Phillips is prepared to: (1) provide raw crude oil for the refinery and (2) to purchase refined petroleum products not consumed in the then contemplated petrochemical facilities, and (3) to counsel and assist Plaintiff in the design, construction and operation of the proposed facility. Over a period of a few years Plaintiff and Defendant worked closely on the project. Plaintiff asserts that it divulged to Defendant detailed information that Plaintiff had accumulated as a result of its efforts.

After a period of time it was determined that the plans for an overall petrochemical facility were not feasible in light of the difficulty encountered in obtaining commitments from potential users of petrochemical products from the refinery. Because of this problem the plans for the project were altered by narrowing the project initially to a 'core' refinery which, though designed to produce the maximum yield of petrochemical raw materials to feed various 'satellite' petrochemical plants, would be sufficiently viable to produce larger amounts of normal refinery products during the early years when the 'satellite' and other consuming plants could be installed." It was contemplated that after the refinery was constructed and began operations, petrochemical users could be attracted to build other manufacturing facilities.

Plaintiff contends that in order for the entire project to become feasible it was necessary to obtain an allocation of oil imports from the Department of the Interior, the application for which had to be made by Phillips for reasons not relevant to the instant motion. It is further alleged that some time after the successful application for the change in the Oil Import Regulations, Plaintiff was excluded from the venture by Defendant-Phillips. Phillips and E.D.A. brought the project to a successful conclusion. The refinery that was ultimately constructed was operated by a corporation called "Phillips Puerto Rico Core Co." ("Core").

Upon these facts Plaintiff raises four claims for relief,

with respect to each of which Plaintiff asserts that it has no adequate remedy at law. Complaint ¶ 39 The first claim is, essentially, that "[p]ursuant to the acts, representations and agreements between Prudential and Phillips, a joint venture was formed between the parties"; that pursuant to the joint venture Plaintiff disclosed to Defendants all of the details, ideas and information which made it possible for the project to be successfully completed; and that Defendant has (a) misappropriated and wrongfully excluded Plaintiff from the fruits of the joint venture, (b) refused to account to Plaintiff for the fruits of the joint venture and to pay over to Plaintiff the business properties, rights and interests acquired by Defendant in its own name but for the account of the joint venture, and (c) by reason of the foregoing, Defendant has breached its agreement and its duty of trust and fair dealing to Plaintiff and holds the fruits of the venture, including the equity interest in Core, for the right and benefit of Plaintiff.

For its second claim, Plaintiff alleges misappropriation by Defendant of ideas, data and the like developed by Plaintiff and disclosed to Defendant pursuant to Defendant's acts, agreements and representations. Alleging that the information was disclosed in trust and confidence to Defendant and to be used solely for Plaintiff's benefit, Plaintiff states that by its misappropriation, Defendant inflicted upon Plaintiff wilful, intentional and malicious harm.

Similar to the second claim, the third claim alleges that Defendant, by its acts, statements and representations intended to induce Plaintiff, inter alia, to disclose its data and to

cooperate with Defendant in obtaining the necessary permits and licenses, while concealing its true intention to misappropriate the full benefits of the project and to exclude Plaintiff. Plaintiff alleges that but for such deceitful conduct it neither would have divulged the confidential information to Defendant nor cooperated with it. Finally, Plaintiff alleges that "by reason of the foregoing", Defendant, in equity, holds the fruits of the project on a constructive trust for the benefit of Plaintiff.

For its fourth and final claim, Plaintiff alleges that it refrained from taking any action detrimental to Defendant's efforts to obtain any permits, rights or the like necessary for the establishment of the project. Its forbearance, Plaintiff claims, was directly caused by the acts, representations and agreements of Defendant, "which creates as a fact of equity the right of Plaintiff to share in the fruits and benefits accruing therefrom."

The structure of Plaintiff's prayer for relief reveals Plaintiff's intention that its five subparagraphs are intended to apply to "all" of the claims theretofore raised. It reads as follows:

> 1. That an accounting be had between plaintiff and defendant Phillips as to the transactions had in joint venture hereinabove alleged and that a division be made of the respective rights and interests of the parties in said joint venture in accordance with their agreements and understandings.
>
> 2. That upon completion of such accounting, judgment be entered directing Phillips to pay over to plaintiff all business rights, properties, interest and assets, and particularly, but not limited to, the equity interest in Core, which Phillips holds in its name but for the account and benefit of Prudential.

3. That judgment be entered directing Phillips to account for and pay over to plaintiff all business rights, properties, interests and assets which it holds in its name but for the account and as trustee, constructive or otherwise, for Prudential.

4. That judgment be entered against Phillips awarding to plaintiff recovery of all losses, damages, costs and expenses sustained on account of the claims set forth in the First, Second, Third and Fourth Claims herein, together with interest and reasonable attorneys' fees and costs and disbursements of this action, and

5. That plaintiff be awarded such other and further relief as the Court may deem just and proper.

Broadly speaking, Defendant's answer denied either the allegations outright or sufficient knowledge or information to form a belief as to the allegations of the operative paragraphs of the complaint.

Against this background Defendant's motion must be viewed. For the reasons set forth below the court believes that claims properly triable to a jury exist in the instant action which require that Plaintiff's demand for a jury trial be upheld.

The constitutional basis for the right to a jury trial is set forth in the Seventh Amendment:

> In Suits at common law, where the value in controversy shall exceed twenty-dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

The preservation of this right is reaffirmed in Rule 38(a) of the Federal Rules of Civil Procedure which provides that "the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate." While few would dispute that challenges to this right, viewed against the merger of law and equity in the federal courts,

have caused courts and commentators serious analytical difficulties over the years, the inescapable teaching of recent Supreme Court decisions is that there is a clear federal policy in light of the Seventh Amendment favoring jury trials and that, in doubtful cases, that policy should be favored. Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959); Dairy Queen, Inc. v. Wood, 369 U.S. 469 (1962); Ross v. Bernhard, 396 U.S. 531 (1970); 9 C. Wright & A. Miller, Federal Practice and Procedure § 2302 at 21 (1971).

In this light it is similarly inescapable that the court in this case must recognize the existence, at least in part, of legal claims, and therefore the propriety of Plaintiff's jury demand. Admittedly, there also exist allegations that might suggest the presence, as well, of equitable claims. However, the Supreme Court has consistently held that where both legal and equitable issues are presented in the same case, and even where the legal issues are considered as "incidental" to the equitable issues, if the demand for a jury is timely and properly made it is to be upheld. Dairy Queen, Inc. v. Wood, supra, 369 U.S. at 473. Thus, construing Beacon Theatres, the Fifth Circuit has stated that

> [i]t is . . . immaterial that the case at bar contains a stronger basis for equitable relief than was present in Beacon Theatres. It would make no difference if the equitable cause clearly outweighed the legal cause so that the basic issue of the case taken as a whole is equitable. As long as any legal cause is involved the jury rights it creates control. This is the teaching of Beacon Theatres, as we construe it.

Thermo-Stitch, Inc. v. Chemi-Cord Processing Corp., 294 F.2d 486. 491 (5th Cir. 1961).

With respect to the first "claim," it may reasonably be interpreted as containing "allegations of ordinary breach of contract," Ross v. Bernhard, supra, 396 U.S. at 542, a classic example of a claim cognizable at law. More importantly, without attempting to determine whether there exists only one claim in this case, despite such attempts by both parties, there appears first and foremost and throughout all of the claims which are, essentially, based upon the same set of facts, the allegations that Defendant has, either by the breach of a confidential relationship or through deceit, misappropriated to its own benefit and to the detriment of Plaintiff certain trade or business information developed by Plaintiff. This court agrees with Plaintiff's contention that this presents a legal issue which entitles Plaintiff to a jury trial. See, on very similar facts, Bruce v. Bohanon, 436 F.2d 733, 736 (10th Cir.), cert. denied, 403 U.S. 918 (1971) and cases cited therein; Restatement of Torts, § 757 and comments c & f.

Much has been said on this motion as to the type of relief sought. This court agrees that while the prayer for relief is not controlling it may be considered on a motion such as the instant one. Ross v. Bernhard, supra, 396 U.S. at 538 n. 10; 9 C. Wright & A. Miller, Federal Practice and Procedure § 2304 at 31 (1971). 1/ As recited above, that prayer, which is intended to apply to all the claims contained in the complaint, contains a demand for, inter alia, damages. Coupled with the claims identified above, such a demand "completes" classic legal claims in contract and tort. On this basis alone, Defendant's motion should be denied.

The mere fact that Plaintiff includes in its prayer for relief a demand for an accounting does not alter this decision. As pointed out in Dairy Queen and Bruce, supra, the labels chosen by the pleader do not control. See, generally, 9 C. Wright & A. Miller, Federal Practice and Procedure, § 2310 (1971).

In the Bruce case, a jury trial was permitted on a count involving, in part, a prayer for a decree determining Plaintiff's right to participate with Defendant in the project allegedly established as a result of Defendant's misappropriation of Plaintiff's trade secrets and an "accounting covering all details pertaining to said project." Complaint at 15 (emphasis supplied). Unlike the instant case where the accounting is sought in addition to and therefore, arguably, in connection with damages, the only prayer for damages in Bruce appeared in the second count which was expressly cast "in the alternative, in the event the Court does not grant the equitable relief prayed for upon Count I . . . ." Complaint at 18 (emphasis supplied). Thus, it may reasonably be said that, as compared to Bruce, the instant case presents an even stronger argument in favor of construing the request for an accounting as, at least in part, one for a money judgment, thus entitling Plaintiff to a jury trial under the principles set forth in Dairy Queen v. Wood, supra.

Ross v. Bernhard, supra, of course, suggests a third consideration worthy of examination on a motion such as the one before the court: "the practical abilities and limitations of juries." 396 U.S. at 538 n. 10. Like the Court in Dairy

Queen, supra, this court has not been persuaded that, upon proper instructions from the trial court, a jury would be incapable of determining the issues given to it.

(1) As Professors Wright and Miller point out, to the extent that a particular issue may be considered either legal or equitable depending upon the actual remedy awarded, the Supreme Court has indicated that the constitutionally required solution is to have a jury decide the issue, "even though the court may then have to determine for itself whether to grant relief of a type historically equitable." 9 C. Wright & A. Miller, Federal Practice and Procedure § 2306 at 37 (1971) (emphasis supplied).

David N. Edelstein
Chief Judge

Dated: New York, New York
April 4, 1975

Notice of Motion of Defendant to Dismiss for Lack of Subject Matter Jurisdiction, April 3, 1975

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

A 140

PRUDENTIAL OIL CORPORATION, :

Plaintiff, : 67 Civ. 3748 (CLB)

-against- : NOTICE OF MOTION

PHILLIPS PETROLEUM COMPANY,

Defendant

- x

S I R S :

PLEASE TAKE NOTICE that, upon the files and pleadings in this action and the annexed affidavit of Robert MacCrate, the undersigned will move this Court before the Honorable Charles L. Brieant, at the United States Courthouse for the Southern District of New York, at a time to be designated by the Court for an order, pursuant to Rules 12(d) and 12(h)(3) of the Federal Rules of Civil Procedure, dismissing this action for want of subject matter jurisdiction pursuant to 28 U.S.C. § 1359 and granting such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
April 3, 1975

Yours, etc.

SULLIVAN & CROMWELL

By _____
Robert MacCrate

_____
Richard Urowsky

Attorneys for Defendant
48 Wall Street,
New York, New York 10005.
(212) 952-8100

TO: Gold, Farrell & Marks, Esqs.
595 Madison Avenue
New York, New York 10022

Affidavit of Robert MacCrate, April 3, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A 141

- x

PRUDENTIAL OIL CORPORATION, :

Plaintiff, : 67 Civ. 3748 (CLB)

-against- : AFFIDAVIT OF ROBERT MacCRATE

PHILLIPS PETROLEUM COMPANY, :

Defendant. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Robert MacCrate, being duly sworn, states:

1. I am a member of the Bar of this Court and a member of the firm of Sullivan & Cromwell, attorneys for defendant Phillips Petroleum Company ("Phillips"). I have had personal charge of the defense of this action since its inception, and am fully familiar with the prior proceedings and pretrial discovery.

2. This affidavit is submitted in support of defendant Phillips' application and motion to dismiss this action for want of subject matter jurisdiction, pursuant to Rules 12(d) and 12(h)(3) of the Federal Rules of Civil Procedure. Dismissal is sought on the ground that plaintiff Prudential Oil Corporation ("Prudential New York") has, by collusive assignment, been improperly made a party to this action in violation of 28 U.S.C. § 1359.

3. The complaint in this action alleges four causes of action all of which seek equitable relief under the laws of the State of New York. Briefly, the complaint alleges that plaintiff Prudential New York is the assignee of all claims asserted in the complaint by assignment from Prudential Equities Corp., a Delaware corporation ("Prudential Delaware"), which in turn was the assignee and successor in interest to Prudential Oil Corporation, a Connecticut corporation ("Prudential Connecticut"); that during the years 1962 and 1963 defendant Phillips and Prudential Connecticut entered a joint venture for the creation of a refinery and petrochemical facilities in Puerto Rico; that Prudential Connecticut disclosed confidential proprietary information to Phillips and took and forebore from taking a variety of other actions in reliance on the alleged joint venture; and that thereafter Phillips appropriated the fruits of the alleged joint venture for its own account.

4. The complaint prays that an accounting be ordered and that Phillips be directed to pay over to plaintiff all of its equity interest in Phillips Puerto Rico Core, Inc. ("Core") and that Phillips be declared to hold its interest in Core as constructive trustee for plaintiff.

5. The complaint does not allege, nor does it purport to allege, any claims for relief under the Constitution or laws of the United States. The sole basis for this Court's jurisdiction is the alleged diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332(a).

6. Defendant Phillips filed its answer to the above complaint on October 19, 1967, stating as a defense that plaintiff Prudential New York had been collusively made a party to this suit, and that consequently subject matter jurisdiction was wanting under the provisions of 28 U.S.C. § 1359.

Subsequent Proceedings

7. Following joinder of issue extensive discovery was had by both parties to this action, including the taking of testimony and the production of documents. To date all discovery in this matter has been concluded with the exception of plaintiff's answers to defendant's interrogatories concerning proposed expert testimony to be presented at trial.

8. On December 1, 1969 plaintiff initiated a second action against Phillips in the Supreme Court of the State of New York, New York County Index No. 18661/69, Prudential Oil Corporation v. Phillips Petroleum Company. The complaint in that action, with the exception of the jurisdictional allegations, is in all respects identical to the complaint filed in this action. By order dated January 16, 1970, all proceedings in the New York action were stayed pending final disposition of this suit.

9. On October 5, 1973 defendant Phillips filed a motion with this Court to strike plaintiff's demand for a jury trial on the ground that all relief sought by the complaint is equitable in character. The motion was argued on December 3, 1973, and is still pending before this Court.

10. Prior to July, 1974 the parties developed an agreed "statement and issue concerning jurisdiction", "stipulation of facts" and "statement of the issues to be tried" for inclusion in a pretrial order to be entered in this action. These agreed portions of the proposed pretrial order are annexed to this affidavit as Exhibit 1. The issue concerning jurisdiction as formulated by the parties concerns the subject matter jurisdiction of this Court. Defendant respectfully prays that this issue be determined by the Court prior to trial in accordance with Rules 12(d) and 12(h)(3) of the Federal Rules of Civil Procedure. The following statement in support of defendant's motion to dismiss for want of subject matter jurisdiction is based on the agreed stipulation of facts referred to above and upon plaintiff's answers to pretrial interrogatories and to requests for admission.

Origins of the Action

11. This action arises out of conversations and exchanges of correspondence between officers and employees of Phillips and certain persons associated with Prudential Connecticut. The conversations and exchanges of correspondence took place during the years 1962 and 1963, and are alleged by plaintiff to have given rise to a joint venture between Phillips and Prudential Connecticut for the creation of a refinery and petrochemical facilities in Puerto Rico.

12. Prudential Connecticut was organized on October 30, 1959 under the laws of the State of Connecticut, and had its principal places of business, successively, in Greenwich, Connecticut and New York City. Phillips is a

corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Bartlesville, Oklahoma. Phillips' business is that of an integrated petroleum enterprise engaged in every phase of the petroleum industry and in various petrochemical activities.

Reorganization of Prudential Connecticut As Prudential Delaware

13. On March 1, 1965 a new Prudential Oil Corporation ("Prudential Delaware") was organized under the laws of the State of Delaware.

14. Three months later, on May 26, 1965, the stockholders of Prudential Connecticut voted to dissolve their corporation and reorganize as Prudential Delaware. Accordingly, the stockholders voted to transfer all assets and liabilities of Prudential Connecticut to Prudential Delaware in exchange for the latter's outstanding stock, to be distributed to the stockholders of Prudential Connecticut on a share-for-share basis. On the same day the stockholders of Prudential Delaware voted to acquire all the assets and liabilities of Prudential Connecticut in a share-for-share exchange of stock.

15. As of June 30, 1965 Prudential Connecticut executed a general indenture of conveyance, assignment and transfer of property (without specification of specific property) to Prudential Delaware. Also as of June 30, 1965 Prudential Delaware executed an indenture of assumption of liabilities (without specification of specific liabilities) in favor of Prudential Connecticut.

16. On November 12, 1965 Prudential Connecticut filed a certificate of dissolution.

Alleged Assignment of the Claims in Suit from Prudential Delaware to Prudential New York

17. Shortly after the dissolution of Prudential Connecticut, on December 21, 1965, Prudential Drilling Funds, Inc. ("Prudential Funds") was incorporated in Delaware. Six months later, on June 29, 1966, the board of directors of Prudential Delaware voted to transfer all of the company's assets relating to its business in the management of oil and gas drilling funds to Prudential Funds in exchange for all the issued and outstanding stock of Prudential Funds and the assumption by Prudential Funds of certain liabilities of Prudential Delaware. The board also voted to retain to Prudential Delaware all right, title and interest in any other business in which it was engaged.

18. On the same day Prudential Delaware's board of directors took the following further action:

a. authorized and directed the officers of Prudential Delaware to form a new subsidiary under the name of Prudential Oil Corporation under the laws of the State of New York;

b. authorized the transfer to Prudential New York, in exchange for all the capital stock of Prudential New York, of all obligations, rights and claims of Prudential Delaware with respect to the joint venture, and with respect to the promotion, financing and development of petrochemical companies related to or associated with the joint venture with Phillips Petroleum Company; and

c. voted to change the name of Prudential Delaware to Prudential Equities Corp.

19. On July 12, 1966 Prudential New York was incorporated by Nathan M. Shippee, the chairman of Prudential Delaware. The next day Shippee, as incorporator, elected himself and Patricia Morel, his secretary, as directors of Prudential New York; Shippee and Morel then elected themselves officers of Prudential New York. (See Defendant's Request for Admission, item 19, dated January 21, 1971.)

20. On July 13, 1966, the directors of Prudential New York voted to "acquire all the rights and claims of Prudential Oil Corporation, a Delaware corporation, with respect to the joint venture with Phillips Petroleum Company, and with respect to the promotion, financing and development of petrochemical companies relating to or associated with the joint venture with Phillips Petroleum Company, together with the use of the name of Prudential Oil Corporation, in exchange for 20,000 shares of Common Stock, par value $1 per share, of the Corporation and assumption by the Corporation of any obligations of Prudential Oil Company [sic], a Delaware corporation . . . with respect to said joint venture." This was the sole consideration paid by Prudential New York to Prudential Delaware.

21. On the same day, Nathan M. Shippee on behalf of Prudential Delaware executed a general indenture of conveyance, assignment and transfer to Prudential New York, which states that Prudential Delaware was transferring "the name 'Prudential Oil Corporation' and the use of said name, and the right, title and interest of the Grantor Prudential Delaware in and to the joint venture with Phillips Petroleum Company in respect

of the project for a petrochemical complex in Puerto Rico, including all business properties and interests in connection therewith, including, without limitation, the promotion, financing and development of petrochemical companies relating to or associated with the joint venture with Phillips Petroleum Company, and any and all claims, rights or causes of action accruing or arising from any or all of the foregoing."

22. Also on July 13, 1966, Nathan M. Shippee on behalf of Prudential New York executed an indenture of assumption of liabilities from Prudential Delaware which recited that Prudential New York would "assume payment of any and all liabilities and performance of any and all obligations of Prudential Delaware accrued to or existing at the date hereof, of whatsoever nature or character, whether absolute or contingent, arising out of or in connection with the said joint venture with Phillips Petroleum Company in respect of a project for a petrochemical complex in Puerto Rico."

Authorization by Prudential Delaware of the Bringing of This Lawsuit by Its Wholly-Owned Subsidiary Plaintiff Prudential New York

23. On October 3, 1966, the board of directors of Prudential Delaware (whose name had been changed to Prudential Equities Corp.) authorized and directed the proper officers of Prudential Delaware, at such time as they deemed it advisable and in the best interests of Prudential Delaware, to commence a legal proceeding against Phillips by and in the name of Prudential New York and to take such further action, including retaining counsel, and executing and delivering all such further instruments as they deemed necessary, proper or convenient.

24. On September 11, 1967 the executive committee of Prudential Delaware adopted a resolution that the proper officers of Prudential New York, acting for that corporation, are authorized and directed to take all steps necessary or advisable in the best interest of Prudential Delaware and Prudential New York to commence suit against Phillips, including the retention of all counsel deemed necessary by the proper officers of Prudential New York "in order to recover the property rights of [Prudential New York] in and to the petrochemical complex in Puerto Rico, presently administered by Phillips Petroleum Company".*

25. At the same meeting the executive committee of Prudential Delaware also voted to ratify and confirm "the retention of the law firm of Robert Conrad, Esq. of Washington, D.C. and Palmer, Searles, Delaney & Shaw of New York City by [Prudential New York] to work with the office of Burton M. Abrams, counsel for [Prudential Delaware], for the purpose of commencing the said suit against Phillips Petroleum Company."

26. In the course of the discovery proceedings plaintiff Prudential New York produced a copy of the minutes of the executive committee meeting of Prudential Delaware of September 11, 1967 referred to above in paragraphs 24 and 25. A copy of these minutes is annexed to this affidavit as Exhibit 2. The minutes recite that plaintiff Prudential New York was, at the time of the meeting, a subsidiary of Prudential Delaware.

---

* In its answers to pretrial interrogatories plaintiff acknowledged that the property rights were in actuality the property of its parent corporation, Prudential Delaware (Plaintiff's answer to interrogatory 12

27. Plaintiff Prudential New York was a wholly-owned subsidiary of Prudential Delaware on September 27, 1967, when the summons and complaint in this action were served, and this situation has continued at least to the time of plaintiff's answers to pretrial interrogatories in this action relating to jurisdiction.

Prior Draft Complaint by Prudential Delaware

28. On or about May 5, 1966, approximately two months prior to the incorporation of plaintiff Prudential New York, a meeting was held between Nathan M. Shippee, principal officer of Prudential Delaware, Stanley Learned, president of Phillips, and William Zeman, the general counsel of Phillips. In connection with this meeting a draft complaint was exhibited to the Phillips officers in which claims substantially similar to those stated in the complaint in this action were set forth. (See Shippee pretrial deposition, pp. 908-909.) The draft complaint was marked as Defendant's Exhibit 221 for identification in the pretrial proceedings in this action, and is annexed to this affidavit as Exhibit 3. The draft complaint names Prudential Oil Corporation, a Delaware corporation, as plaintiff and Phillips Petroleum Company, a Delaware corporation, and Oscar L. Chapman as defendants. The draft complaint indicates that the action was to be brought in "THE SUPREME COURT OF NEW YORK, NEW YORK COUNTY".

Prudential New York Has No Business Except the Prosecution of this Action

29. The answers given by plaintiff to pretrial interrogatories establish the lack of substance to plaintiff's corporate existence. The sole business of Prudential New York is the prosecution of this action and it transacted no business from the date of its incorporation on July 12, 1966 until the institution of this action (Plaintiff's answers to interrogatories 3(a)-(e) sworn to April 26, 1971) Prudential New York maintains no books of account.

(Plaintiff's answer to interrogatory 4 (cf. answer to interrogatory 5) sworn to April 26, 1971) The only assets which Prudential New York ever has had since its incorporation are the alleged rights and claims asserted in this action and the right to use the name Prudential Oil Corporation. (Plaintiff's answers to interrogatories 6 and 7 sworn to April 26, 1971)

Conclusion

30. The foregoing facts establish that:

a. This action has been since its inception under the direct control of Prudential Delaware;

b. Prudential Delaware has had a direct and immediate financial stake in the outcome of this action, and would participate through Prudential New York in any recovery which might be had in this action;

c. Prudential Delaware has had the power since the inception of this action to compel the delivery to it of the fruits, if any, of this action;

d. The creation of Prudential New York without corporate substance by and at the direction of Prudential Delaware and the collusive assignment from Prudential Delaware to Prudential New York of the claims in suit were undertaken for the purpose of invoking the diversity jurisdiction of this Court pursuant to 28 U.S.C. § 1332(a); and

e. Prudential New York has been nothing more than a hollow agency of Prudential Delaware for the collection of the award to which the complaint alleges Prudential New York is entitled.

WHEREFORE, defendant Phillips respectfully prays that this Court enter an order dismissing this action for want of subject matter jurisdiction pursuant to Rules 12(d) and 12(h)(3) of the Federal Rules of Civil Procedure and in accordance with 28 U.S.C. § 1359.

Robert MacCrate

Sworn to before me this
3rd day of April, 1975

Notary Public

IRENE K. MENTEL
Notary Public, State of New York
Residing in Queens County
Queens Co. Clk's No. 41-7303895
Certificate Filed in
New York Co. Clk's
Commission Expires March 30, 1976

Exhibits Annexed To the April 3, 1975
Affidavit of Robert MacCrate

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A 153

- x

PRUDENTIAL OIL CORPORATION, :

Plaintiff, :

-against- : 67 Civ. 3748 (CLB)

PHILLIPS PETROLEUM COMPANY, : PROPOSED PRETRIAL ORDER

Defendant. :

Exhibit 1

- x

1. Statement and issue concerning jurisdiction.

a. Plaintiff Prudential Oil Corporation ("Prudential New York") is a New York corporation. It asserts claims as the assignee of Prudential Oil Corporation, a Delaware corporation ("Prudential Delaware"), which it is alleged by plaintiff succeeded to such claims from Prudential Oil Corporation, a Connecticut corporation ("Prudential Connecticut"). Defendant Phillips Petroleum Company is a Delaware corporation with its principal place of business in Bartlesville, Oklahoma.

b. Subject matter jurisdiction is invoked by plaintiff on the basis of alleged diversity of citizenship and that the amount in controversy exceeds the sum of $10,000 pursuant to 28 U.S.C. § 1332(a).

c. Defendant by the second defense in its answer asserts that the Court has no jurisdiction over the subject matter of the action pursuant to 28 U.S.C. § 1359.

d. The issue as to subject matter jurisdiction is whether plaintiff Prudential New York by assignment has been improperly or collusively made a party to this

action to invoke the jurisdiction of this Court.

2. Stipulated facts. For purposes of this action without conceding the admissibility on grounds of relevancy or materiality, the parties have stipulated that the following facts are not in dispute. The parties may offer other and further evidence concerning the matters herein stipulated.

Exhibit 1

A. The Parties

(1) Prudential Connecticut was organized on October 30, 1959, under the laws of the State of Connecticut and its certificate of organization was filed November 12, 1959. Until October 1, 1962 the principal place of business was in Greenwich, Connecticut, when it opened an office in New York City which was thereafter its principal place of business.

(2) Prudential Delaware was organized on March 1, 1965, under the laws of the State of Delaware. On May 26, 1965 the stockholders of Prudential Delaware voted to acquire all property and assets and liabilities of Prudential Connecticut in a share-for-share exchange of stock effective as of June 30, 1965.

(3) On May 26, 1965 the stockholders of Prudential Connecticut voted to reorganize as Prudential Delaware, to dissolve Prudential Connecticut as of June 30, 1965 and to transfer the entire assets, liabilities and good will of Prudential Connecticut to Prudential Delaware as of June 30, 1965, and that each shareholder of Prudential Connecticut should

receive one share of stock in Prudential Delaware for each share held in Prudential Connecticut.

(4) A certificate of dissolution of Prudential Connecticut was filed on November 12, 1965.

(5) Prudential Drilling Funds, Inc. ("Prudential Funds") was incorporated in Delaware on December 21, 1965. Its name was changed to Prudential Funds, Inc. on August 5, 1966.

Exhibit 1

(6) On July 13, 1966 the shareholders of Prudential Delaware voted to change its name from "Prudential Oil Corporation" to "Prudential Equities Corp." and the minutes of the shareholders meeting recite that the change was "to reflect more accurately the business of the corporation." This change was duly effected on July 15, 1966. On June 2, 1969 the name of Prudential Delaware was further changed to "Prudential Resources Corp."

(7) Plaintiff Prudential Oil Corporation ("Prudential New York") is a New York corporation which was incorporated on July 12, 1966.

(8) Defendant Phillips Petroleum Company ("Phillips") is a Delaware corporation with its principal place of business in Bartlesville, Oklahoma. At all times the business of Phillips was that of an integrated petroleum enterprise engaged in every phase of the petroleum industry and in various petrochemical activities, including exploration for and production of crude oil, natural gas and natural gas liquids; transportation of crude oil from wellhead to refinery; refining and processing of crude oil and unfinished oils into a broad range of by-products, including

gasoline, aviation fuel, petrochemical intermediates, and petrochemicals; and the transportation and marketing of refined products and petrochemicals.

B. Assignment of Claims

(9) As of June 30, 1965 a general indenture of conveyance, assignment and transfer of property and assets from Prudential Connecticut to Prudential Delaware, without specification of specific property and assets, was executed by Prudential Connecticut. Also as of June 30, 1965 an indenture of assumption of liabilities taken over by Prudential Delaware from Prudential Connecticut, without specification of specific liabilities, was executed by Prudential Delaware.

Exhibit 1

(10) On June 29, 1966, the board of directors of Prudential Delaware took the following action:

(a) approved and authorized the transfer by Prudential Delaware to Prudential Funds of all of Prudential Delaware's assets relating to its business in the management of oil and gas drilling funds, including its fiscal agency for "the Prudential Drilling Funds" in exchange for all of the issued and outstanding stock of Prudential Funds and the assumption by Prudential Funds of certain liabilities of Prudential Delaware with Prudential Delaware "retaining to itself, all of the right, title and interest of [Prudential Delaware] in and to any business unrelated to the management of oil and gas drilling funds". The business of Prudential

Funds consists of publicly offering unit participations in and administering oil and gas exploration and development programs known as the "Prudential Drilling Fund Programs", which provide facilities for co-ownership and participation by individuals in high income tax brackets in oil and gas drilling ventures.

Exhibit 1

(b) voted to change the name of Prudential Delaware to Prudential Equities Corp.

(c) authorized the transfer to Prudential New York, in exchange for all the capital stock of Prudential New York, of "all obligations, rights and claims of the Corporation with respect to the joint venture, and with respect to the promotion, financing and development of petrochemical companies related to or associated with the joint venture with Phillips Petroleum Co. and, upon the effectiveness of the aforementioned change of name of the Corporation, the use of the name of the Corporation, Prudential Oil Corporation".

(d) authorized and directed the officers of Prudential Delaware to form a new subsidiary under the name of Prudential Oil Corporation under the laws of the State of New York.

(11) On July 13, 1966 Nathan M. Shippee as the incorporator of Prudential New York elected himself and Patricia R. Morel as the directors of Prudential New York until the first annual meeting of shareholders, or until their successors were elected and qualified. On the same day the directors of Pruden-

tial New York elected the following officers of the corporation: Nathan M. Shippee - President and Treasurer; Patricia R. Morel - Vice President and Secretary.

(12) On July 13, 1966, the directors of Prudential New York voted to "acquire all the rights and claims of Prudential Oil Corporation, a Delaware corporation, with respect to the joint venture with Phillips Petroleum Company, and with respect to the promotion, financing and development of petrochemical companies relating to or associated with the joint venture with Phillips Petroleum Company, together with the use of the name of Prudential Oil Corporation, in exchange for 20,000 shares of Common Stock, par value $1 per share, of the Corporation and the assumption by the Corporation of any obligations of Prudential Oil Company [sic], a Delaware corporation, of any obligations with respect to said joint venture, the same to be effective as of the close of business on July 13, 1966" and voted that "the proper officers of this Corporation be, and they hereby are, authorized and directed to issue to Prudential Oil Corporation, a Delaware corporation, (name being changed to Prudential Equities Corp.) certificates evidencing 20,000 shares of fully paid and non-assessable shares of Common Stock of the Corporation upon delivery of the aforementioned consideration to this Corporation" and that "the aforementioned consideration to be received by the Corporation in exchange for the 20,000 shares of

Exhibit 1

Common Stock, par value $1 per share, of this Corporation be, and the same hereby is, adjudged and declared to be of a value of at least $20,000, and to be necessary for the business and in the best interests of this Corporation".

(13) On July 13, 1966, Nathan M. Shippee on behalf of Prudential Delaware executed a general indenture of conveyance, assignment and transfer to Prudential New York, which states that Prudential Delaware was transferring "the name 'Prudential Oil Corporation' and the use of said name, and the right, title and interest of the Grantor Prudential Delaware in and to the joint venture with Phillips Petroleum Company in respect of the project for a petrochemical complex in Puerto Rico, including all business properties and interests in connection therewith, including, without limitation, the promotion, financing and development of petrochemical companies relating to or associated with the joint venture with Phillips Petroleum Company, and any and all claims, rights or causes of action accruing or arising from any or all of the foregoing." Also on July 13, 1966, Nathan M. Shippee on behalf of Prudential New York executed an indenture of assumption of liabilities from Prudential Delaware which recited that Prudential New York would "assume payment of any and all liabilities and performance of any and all obligations of Prudential Delaware accrued to or existing at the date hereof, of whatsoever nature or character, whether absolute or

Exhibit 1

contingent, arising out of or in connection with the said joint venture with Phillips Petroleum Company in respect of a project for a petrochemical complex in Puerto Rico, including, without limitation, the promotion, financing and development of petrochemical companies relating to or associated with the said joint venture with Phillips Petroleum Company."

Exhibit 1

(14) On October 3, 1966, the Board of Directors of Prudential Delaware (whose name had been changed to Prudential Equities Corp.) authorized and directed the proper officers of Prudential Delaware, at such time as they deemed it advisable and in the best interests of Prudential Delaware, to commence a legal proceeding against Phillips by and in the name of Prudential New York and to take such further action, including retaining counsel, and executing and delivering all such further instruments as they deemed necessary, proper or convenient. On September 11, 1967 the Executive Committee of Prudential Delaware adopted a resolution that the proper officers of Prudential New York, acting for that corporation, are authorized and directed to take all steps necessary or advisable in the best interests of Prudential Delaware and Prudential New York to commence suit against Phillips, including the retention of all counsel deemed necessary by the proper officers of Prudential New York "in order to recover the property rights of [Prudential New York] in and to the petrochemical complex in Puerto Rico, presently

administered by Phillips Petroleum Company" and adopted a further resolution ratifying and confirming "the retention of the law firm of Robert Conrad, Esq. of Washington, D.C. and Palmer, Searles, Delaney & Shaw of New York City by [Prudential New York] to work with the office of Burton M. Abrams, counsel for [Prudential Delaware], for the purpose of commencing the said suit against Phillips Petroleum Company."

Exhibit 1

C. The Interest of EDA in Promoting Industries and a Third Refinery

(15) In 1942 the Puerto Rican Government commenced a program known as "Operation Bootstrap" to encourage industrial and commercial development in Puerto Rico with the objective of creating job opportunities on the Island. Since its establishment in 1950, the Economic Development Administration ("EDA") has administered this program.

(16) As of March 1961, when Rafael Durand succeeded Teodoro Moscoso as Administrator of EDA, there were two existing oil refineries in Puerto Rico which had been constructed during the early 1950's as a part of "Operation Bootstrap".

(17) During the first half of 1961 the officials of EDA prepared to encourage the location in Puerto Rico of a refining and petrochemical facility and thus encourage the expansion of the petrochemical industry of Puerto Rico. Such program was conceived as part of "Operation Bootstrap" to compensate for the lack of indigenous raw materials in Puerto Rico

necessary to support industrial growth. The products of such a facility were looked upon as intermediate products which ultimately would be used to produce a large variety of consumer products, thus forming the basis of new diverse industries and resulting in substantially increased employment in Puerto Rico.

D. Petroleum, Its Basic and Intermediate Processing, Its Products, and the Associated Industrial Activities

Exhibit 1

(18) Petroleum --

(a) Petroleum ("crude" or "crude oil") as it comes from the ground is a mixture of thousands of different compounds that range from extremely light gases to semi-solid materials at ordinary room temperatures, such as asphalt or paraffin wax. The gases are dissolved to some extent in the other components of crude oil because of the extreme pressure to which petroleum is subjected in the ground. Likewise, paraffin wax is dissolved in the so-called paraffinic crudes but can be removed by combinations of refrigeration and filtration or by the application of selective solvents to appropriate fractions of crude oil. As a liquid, petroleum may be as black and thick as melted tar, or as colorless and thin as water. Its characteristics depend entirely upon the particular oil field from which it comes.

(b) Chemically, crude oil is largely composed of hydrocarbons. These are compounds of hydrogen and carbon but they have substantially different characteristics from those of hydrogen (a light, colorless, odorless gas) and carbon (a black solid) which combine in various proportions to form the hydrocarbons. In addition, crude

oil often contains sulfur, either uncombined or present as a part of certain hydrogen-carbon-sulfur compounds, as well as metals and nitrogen.

(c) The four major groups of petroleum hydrocarbons are paraffins, naphthenes, aromatics and olefins. Olefins do not normally occur in crude oil in significant concentrations, but result from certain refinery processes.

Exhibit 1

(i) Paraffins -- The paraffins, often called alkanes, occur as chain structure hydrocarbons (which refers to their molecular structure, the arrangement of the atoms in the hydrocarbon molecule). Paraffin hydrocarbons include the following: methane, ethane, propane, butane and pentane. Methane, ethane and propane, which are gases at room temperature, are used for industrial and domestic fuel and as feedstocks for further processing into petrochemical compounds, including acetylene, ethylene and propylene. Butane, also a gas at room temperature, is used as gas for heating and cooking and in blended gasoline. Pentane, which at room temperature may be either a gas or liquid, is used in gasoline. In regard to the form of hydrocarbons, the following rule usually prevails: the lower the molecular weight of the hydrocarbon, the lower its boiling point. In turn, the boiling point of a hydrocarbon determines its condition as a gas, liquid or solid, at ordinary room temperatures and pressures. Paraffinic hydro-

carbons are called "normal" when their carbon atoms are arranged in a straight-chain configuration. In the case of butane and pentane, it is possible to have two or more distinct compounds having the same number of hydrogen and carbon atoms. These variations, known as isomers, are characterized by a different arrangement of the atoms within the molecule.

Exhibit 1

(ii) Olefins -- Olefins resemble the paraffins except that the olefin molecules have two or more less hydrogen atoms and contain one or more chemical "double bonds" between two of the carbon atoms and thus are referred to as unsaturated hydrocarbons. For example, the olefin butylene is similar to butane, a paraffin, except that two of the hydrogen atoms of the butane molecule have been replaced by a double bond between two carbon atoms. As is the case with paraffins, by re-arrangement of the atoms within the molecule there can be isomers of the olefins. An isomer of butylene would be isobutylene. It has the same number of carbon and hydrogen atoms in its molecule, but they are not arranged in a straight "chain". The chain is "branched" by having one carbon atom attached to the middle of three carbon atoms in the straight chain. There are also olefin-type compounds containing more than one double bond. These are called di-olefins, as in the case of butadiene, which has two double bonds. Each double bond replaces two hydrogen

atoms. Butadiene is an ingredient for the manufacture of synthetic rubber and plastics. A 165

(iii) Naphthenes -- Naphthenes, which are also referred to as cycloparaffins, have their carbon atoms arranged in a ring. By removing two hydrogen atoms from each of the end carbon atoms of a paraffin chain and joining the two ends together, thereby closing the ring, a naphthene hydrocarbon is formed. Cyclohexane is an important naphthene which serves, among other uses, as a major raw material for the production of nylon. Cyclohexane is usually produced commercially by the hydrogenation of benzene, as later described. Conversely, aromatics can be produced by dehydrogenation of benezene and of naphthenes as described in the following paragraphs.

Exhibit 1

(iv) Aromatics -- The term aromatics was originally applied to benzene and its derivatives because of their characteristic odor. Aromatics are a further family of hydrocarbons with a ring-type arrangement of atoms within the molecule. Moreover, naphthenes may be converted into aromatics by removal of hydrogen. The basic structure of aromatics is typified by benzene, but the aromatics include many hundreds of related compounds, for example, toluene (methyl benzene) and xylene (dimethyl benzene). Aromatics are produced in very substantial quantities for use in aviation and automotive fuels and as basic ingredients for various chemical products. Ethyl-benzene, meta-xylene, ortho-

xylene and para-xylene are all examples of aromatics which are important petrochemical building blocks. Para-xylene is, for example, a principal raw material in polyester synthetic fibers, ethyl-benzene is coverted by simple dehydrogenation to styrene, an important component of several plastics and synthetic rubber, and ortho-xylene is a principal feedstock for manufacture of phthalic anhydride, a component of alkydresins and plasticizers for polyvinyl chloride.

Exhibit 1

(A) All of the above-mentioned C_8 aromatics are normally produced commercially by physical separation of the various isomers from the mixed eight carbon atom (C_8) aromatic stream obtained by catalytic reforming and selective solvent extraction of hydrocarbon fractions. The separation of the various C_8 aromatics is performed by physical means including distillation and crystallization. In addition, catalytic isomerization of C_8 aromatics may be used to increase yields of desired isomers at the expense of others. Isomerization is often used for increase the yield of paraxylene, a principal raw material for polyester synthetic fibers.

(B) There is another special class of aromatic hydrocarbons called poly-nuclear aromatics, in which two or more benzene rings share at least two carbon atoms on one side of the ring in common. These include naphthalene (two ring structure) and anthracene and phenanthrene (three ring structures) and their homologs. The most important of these materials commercially is naphthalene, the substance of which the common mothball is comprised. Naphthalene was originally derived principally from coal tar and its main use was for

oxidation to produce phthalic-anhydride. During the 1950's processes were developed for manufacturing naphthalene from petroleum to supplement the growing demand for naphthalene from coal tar. As increased use of PVC resins required growing volumes of phasticizers based on phthalic-anhydride, the demand for this material was increasing rapidly during the latter 1950's and early 1960's. Phthalic-anhydride can also be produced by oxidation of ortho-xylene, and in fact, some phthalic-anhydride plants were built which had the capacity of processing alternatively naphthalene or ortho-xylene feedstocks, or mixtures of the two.

Exhibit 1

(C) About concurrent with the development of commercial processes for manufacture of naphthalene from petroleum, the oxidation of ortho-xylene to phthalic-anhydride was developed to the extent that it become economically preferable to oxidation of naphthalene either from coal tar or a petroleum source. Consequently, most phthalic-anhydride plants built after the early 1960's are designed principally for ortho-xylene feeds, and commercial petrochemical operations have been oriented toward increasing supplies of petroleum based ortho-xylene rather than petroleum derived naphthalene. Both feedstocks, however, are still used extensively in phthalic-anhydride manufacture.

(19) Basic Processing of Crude Oil --

(a) Distillation -- Petroleum refining begins with the distillation of crude oil into fractions or cuts of different boiling ranges. Crude oil is a mixture of thousands of hydrocarbons of different molecular sizes, structures and boiling points. Since a hydrocarbon's boiling point is substantially

related to the size of its molecule, separation by boiling points (distillation) also results in separation by hydrocarbon molecule size.

(i) In distillation, crude oil is heated to a high temperature (typically 700-800° F.) and pumped into a fractionating tower. The typical "bubble tower" consists of 20, 30 or more trays with bubble caps, through which vapors can rise from below, and overflow pipes through which condensed liquid can return to the tray below. The hot crude oil enters the tower about six or seven trays from the bottom, and most of it immediately "flashes" into vapors once the pumping pressure has been relieved. These vapors pass upward through the bubble caps, rising higher and higher until a tray is reached where the temperature is low enough for hydrocarbons of that boiling point to condense into liquid.

Exhibit 1

(ii) The following identifications are commonly used to identify the various divisions or cuts of crude oil obtained through distillation, listed from the lightest to the heaviest cuts:

(A) Gas;

(B) Gasoline;

(C) Naphtha;

(D) Kerosene;

(E) Light gas-oil;

(F) Heavy gas-oil;

(G) Fuel oil or Residuum.

(iii) The fractionating tower regulates the

actual cuts into which the crude oil will be separated and its design and the characteristics of the particular crude oil charge stock will determine the percentage yields of the individual cuts. The light gas oils and heavier fractions collect on trays near the bottom of the fractionating tower. The kerosene fractions condense farther up in the tower, and gasoline vapors are taken off the top, along with light gases that neither condense nor dissolve in the gasoline fraction. The gasoline vapors are then condensed, and part of the liquid is returned as "reflux" to the top tray to improve separation of the somewhat heavier gasoline-range hydrocarbons that condense on trays near the top. The gasoline-range fraction distilled from crude oil is called light virgin naphtha or more often, straightrun gasoline.

Exhibit 1

(b) Cracking -- Early in the history of petroleum refining it was found that higher-boiling hydrocarbons (the heavier cuts of crude oil) could be broken down or "cracked" into lower-boiling, lighter hydrocarbons by subjecting them to high temperatures. A form of cracking was used as early as 1869 to convert heavier than kerosene crude-oil fractions into kerosene. Use of cracking processes to produce gasoline began in 1913. All of the process variations applied commercially prior to 1936 employed a method called thermal cracking. The modern processes, which have now almost completely replaced the earlier process, are catalytic cracking and hydrocracking.

(i) Thermal Cracking -- Because of the high

temperatures required in thermal cracking (up to 1,000° F. or more), high pressures are usually employed (350 to 1,000 pounds per square inch) in order to keep the feedstock liquid while it undergoes cracking reactions. Otherwise, individual hydrocarbons would be overdecomposed, forming light gases and laying down coke-like solid deposits inside the cracking unit.

Exhibit 1

(ii) Catalytic Cracking -- High temperatures and pressures are not required, however, when cracking is carried out in the presence of a catalyst (a substance that greatly speeds up chemical reactions without being itself altered or destroyed). The catalyst offers a large amount of surface on which the cracking reactions occur. Carbon formed by these reactions is deposited on the surface of the catalyst and is later burned off by a stream of air in a catalyst-regeneration step. The main source of feed to catalytic cracking units are the heavy distillates, commonly known as gas oils, which are produced from crude oil -- these typically boil between 450° F. and an end point that exceeds 1,000° F. The product spectrum, which can be adjusted by a number of operating factors, runs the full range from hydrogen, a light gas, on one extreme to a heavy No. 6 fuel oil component at the other extreme.

(iii) Hydrocracking -- Hydrocracking is a process in which cracking occurs in the presence of both hydrogen and a catalyst. The possibility and

desirability of this type of cracking had been known for a number of years. However, it did not become economically feasible until the 1960's. In a sense, hydrocracking and catalytic cracking are in competition with one another, since a gas-oil charge can be processed in either unit. Despite this apparent conflict and the established use of catalytic cracking, there has been increased use of hydrocracking because of several advantages it offers. It increases the flexibility of refinery operation because it can process a wide variety of feedstocks, including virgin gas oils, catalytic cracking cycle oils, coker gas oil, and very heavy oils. The yields from this unit may include high quality gasoline, jet fuel, and distillate-fuel components. Unlike the catalytic cracking products, these are all storage-stable components and highly hydrogen-saturated compounds.

Exhibit 1

(iv) Dealkylation -- A special cracking process ordinarily applied to petrochemical precursors is called "dealkylation." In this process, alkyl side chains are removed from benzene or naphthalene rings to covert alkyl benzenes to benzene, or alkyl naphthalenes to naphthalene. While ethyl and higher carbon atom side chains can be removed in this manner without destroying the aromatic nucleus by rupturing the ring structure, commercial application of dealkylation processes is generally limited to removal of one, or at most two, methyl groups from the aromatic ring. The process operates

in an atmosphere of high hydrogen concentration. Hydrogen replaces the carbon-to-carbon bond by which the methyl group is attached to the aromatic nucleus, and also saturates the methyl group to form methane as a major product. Both catalytic and thermal processes are available. Among the commercial names used for such hydrodealkylation processes are "Hydeal", "Detol" and "HDA".

Exhibit 1

(c) Thermal Reforming -- In addition to "cracking", which breaks larger molecules into smaller ones and thereby converts heavier cuts of crude oil into lighter hydrocarbons, it was found that by passing naphtha fractions of petroleum feedstock through tubes in a furnace at high pressure (750-1000 pounds per square inch) and heating to 1000-1100° F., hydrocarbon molecules could be recombined or "reformed" into hydrocarbons with higher octane numbers. The octane number of a gasoline is a measure of its antiknock value. Accordingly, reforming of feedstock destined for use as motor fuel became an important processing step to improve the quality of gasoline. With the development of catalytic reforming in the early 1940's, thermal reforming has become of lesser importance and is now insignificant in commercial refining operations.

(d) Catalytic Reforming -- Just as thermal cracking has largely been replaced by catalytic cracking, thermal reforming has been replaced by catalytic reforming as a method for improving octane number. Moreover, by catalytic reforming it is possible to convert naphthenes to aromatics and hydrogen, and some paraffins

can be restructured to form aromatic rings.

(e) Solvent Extraction -- By use of special solvents it is possible to separate portions of a hydrocarbon mixture according to its chemical structure or group, i.e., paraffin, olefin, naphthene, or aromatic. This is especially useful for compounds which have similar boiling points and which, therefore, are not readily separable by fractionation or distillation. When the solvent is mixed with the feedstock under proper conditions of temperature and pressure, a portion is dissolved in the solvent. After removal from the contacting vessel or area, the desired portion is recovered by evaporation of the solvent. This recovered portion is known as extract. The extract recovered through the use of solvents is predominately "aromatic" in composition. The portion of feedstock which remains undissolved is referred to as raffinate. There are a number of commercially available processes for separation of gasoline boiling range hydrocarbons by hydrocarbon type. The Sulfolane and Udex processes are more widely used than any other.

Exhibit 1

(20) Intermediate products derived from petroleum, the processes by which they are derived, and the commercial uses to which the chemical products are put.

(a) The derivation of chemicals from petroleum hydrocarbons --

(i) Since petroleum is essentially complex combinations of carbon and hydrogen atoms and since carbon and hydrogen are important components of many industrial chemicals, attempts were made at an early stage in petroleum production to use petroleum

hydrocarbons as feedstock for the chemical industry in place of coal or fermentation products which had previously been the chief raw materials. The first successful work on an industrial scale was carried out approximately fifty years ago in a plant which produced acetone, a solvent of importance for explosives, from refinery gases.

Exhibit 1

(ii) The development since that time of the chemical industry based on petroleum intermediates is reflected in the fact that the total production of primary organic chemicals based on petroleum in 1965 was 5.5 million tons in Europe and 18 million tons in the United States. In addition to the United States and Europe, other areas such as Russia, Japan, India, Australia, South Africa and South America have growing petroleum chemical industries.

(iii) Outside the United States, the principal feedstock for petroleum chemicals has been liquid rather than gas. There were two main reasons for this: on the one hand, in Europe and elsewhere the gaseous feedstocks, which were readily available in the continental United States were virtually absent until recently; and, on the other hand, there was a surplus outside the United States until the late 1960's of the naphtha fraction, which in the United States was needed as a gasoline feedstock because of the heavy demand for gasoline as a motor fuel.

(b) <u>The principal processes by which intermediate products are derived and the resulting production of</u>

chemicals -- The principal processes by which petroleum hydrocarbons are converted into raw materials for the chemical industry (which are subsequently described in relation to the products produced) may conveniently be classified as follows: removal of hydrogen leading to unsaturated hydrocarbons; removal of hydrogen to obtain aromatics; oxidation; chlorination; sulphuration; isolation of carbon; and isolation of hydrogen.

Exhibit 1

(i) Products derived by removing hydrogen --

(A) Removal of hydrogen to obtain olefins -- This process is one of the most important routes by which oil feedstocks are converted into chemicals. This may be done catalytically, or in the absence of a catalyst under conditions in which rupture of the carbon chain also takes place.

[1] Under mild catalytic conditions the removal of hydrogen from a paraffinic fraction occurs without any change in the carbon structure. An example is the production of butadiene from butene or butane by dehydrogenation at about 350-480° C. in the presence of a catalyst.

[2] Much more commonly hydrogen is removed in the absence of a catalyst under conditions in which rupture of the carbon chain also takes place. Thus paraffin wax may be cracked at about 500° C. to yield a mixture of olefins with a range of chain lengths. The products are separated into fractions of different chain lengths, the

higher of which may be used for detergent manufacture, for example, and the lower for production of plasticizer alcohols.

[3] The most common operation for removing hydrogen is cracking to produce the lower olefins. More vigorous conditions are required than for cracking paraffin wax and thus temperatures are employed in the range of 650-850° C and higher. The lower olefins ethylene, propylene, butenes and butadiene are the main desired products and, to minimize their further reaction with one another, they are diluted by introducing steam into the feedstock stream and, as a further step, the products of cracking are rapidly cooled or quenched.

Exhibit 1

[4] The relative proportions of the lower olefins produced depends principally upon the nature of the feedstock used and upon the conditions of cracking. Although small-scale operations based on crude oil have been carried out, and gas oil is currently employed on some commercial installations, the most generally used feedstock for steam cracking outside the United States is naphtha. Using this as the basis, all the lower olefins mentioned are produced in useful amounts, the ethylene yield increasing from 14 per cent to over 30 per cent as the cracking temperature increases

from 650 to 850° C. The increased yield of ethylene is obtained at the expense of propylene and butene, though the yield of butadiene is not materially affected.

[5] In the continental United States, lighter fractions, especially ethane or propane, which are extracted from natural gas, are used extensively as feedstocks for cracking. Compared with naphtha they give higher yields of ethylene on cracking -- for example, in cracking ethane the yield of ethylene reaches 75-85 per cent by repeated recycling. However, in such an operation the production of propylene, butene and butadiene is insignificant.

Exhibit 1

[6] The lower olefins are gases and the first step to their utilization is to separate them from those components of the cracked products which are liquids under normal ambient conditions. The major portion of the liquid components has a high octane number and may be blended into gasoline after treatment. This treatment consists in the removal of the bulk of the di-olefins which polymerize on storage to give gums, a residue remaining upon evaporation.

[7] The gaseous components of the cracked products are a complex mixture containing not only the desired lower olefins but also hydrogen, methane and other hydro-

carbon gases. They are separated by distillation under conditions of refrigeration and pressure into C_1, C_2, C_3 and C_4 fractions. After isolation, the individual C_2, C_3 and C_4 olefins are used as building blocks for the production of a wide range of industrial chemicals, plastics and synthetic fibers,

Exhibit 1

including the following:

[a] Ethylene and its derivatives -- Ethylene is utilized to produce the following compounds: Polyethylene, Ethylene oxide, Styrene, Ethyl alcohol, Acetaldehyde, and Ethylene dichloride. These primary products in turn undergo further processing whereby they are converted into the following ultimate consumer products:

[i] Polyethylene - Films, mouldings, pipes, cable covering, netting, and others.

[ii] Ethylene oxide - Intermediate for: ethylene glycol used as anti-freeze and raw material for polyester fibers known under various trademarks, including "Dacron", "Quintanna" and "Kodell"; and for detergents, textile assistants, solvents, and others.

[iii] Styrene - Mainly for polystyrene plastics; also for synthetic rubber.

[iv] Ethyl alcohol - Industrial solvent and chemical intermediate.

[v] Acetaldehyde - Converted into acetic acid (for cellulose acetate fibers and plastics and for polyvinyl acetate adhesives and emulsion paints), into plasticizer alcohols and into paint resin intermediates.

Exhibit 1

[vi] Ethylene dichloride - Converted into vinyl chloride and thence into polyvinyl chloride (PVC) heat workable plastics, including phonograph records, plastic toys, vinyl flooring, artificial leather and many other products.

[b] Propylene and its derivatives --

The production of propylene is utilized to produce the following primary products: Isopropyl alcohol, Butanol and Ethyl hexanol, Heptenes and Propylene tetramer, Cumene, Propylene oxide, Polypropylene, Glycerol, Acrylonitrile. These primary products are further converted for the following applications:

[i] Isopropyl alcohol - Partly converted to acetone which, like isopropyl alcohol itself, is used as a solvent and a chemical intermediate.

[ii] Butanol - Solvent and chemical intermediate.

[iii] Ethyl hexanol - Plasticizers.

[iv] Heptenes - Plasticizer alcohols.

[v] Propylene tetramer - Reacted with benzene to give dodecyl benzene for detergents.

[vi] Cumene - Raw material for simultaneous production of acetone and phenol, an intermediate for plastics and nylon.

Exhibit 1

[vii] Propylene oxide - Intermediate for manufacture of plastic foams.

[viii] Polypropylene - Films, fibers and plastic moldings.

[ix] Glycerol - Pharmaceutical and raw material for resin manufacture.

[x] Acrylonitrile - Basis for acrylic fibers and intermediate for adiponitrile, a raw material for nylon.

[c] C_4 Olefins and their derivatives -- C_4 olefins are used in chemical manufacture for the production of n-Butenes, iso-Butene and Butadiene. Some of the more important resulting products from this group of intermediates are the following:

[i] n-Butenes:

[A] sec-Butanol - Solvent

[B] Methyl ethyl ketone - Solvent and lube-oil dewaxing agent.

[C] Heptenes - Plasticizer alcohol intermediate.

[ii] iso-Butene:

[A] Butyl rubber - Inner tubes and specialty rubbers.

[B] Polyisobutene - Lube-oil additives and sealing compounds.

[C] Di-isobutene - Plasticizer alcohol intermediate.

[iii] Butadiene:

[A] Copolymers with styrene - Synthetic rubber, shoe soling compounds.

Exhibit 1

[B] Polybutadiene - Synthetic rubber.

[C] Copolymers with acrylonitrile - Specialty rubbers.

[D] Copolymers with styrene and Acrylonitrile - Plastics.

[E] Chloroprene - Specialty oil-resistant rubbers.

[F] Adiponitrile - Raw material for nylon.

(B) Removal of hydrogen to obtain Acetylene -- If more severe cracking conditions are employed than those used to produce ethylene from petroleum feedstocks, further hydrogen can be removed with a resulting formation of acetylene.

[1] Acetylene thus formed is competitive with acetylene produced by the more traditional process based on generation from calcium carbide produced from lime and coal with an accompanying use of large quantities of electric power. The production of acetylene from petroleum

is used to produce the following chemicals: Vinyl chloride, Acetaldehyde, Per- and trichlorethylene, Vinyl acetate, Chloroprene, and Acrylonitrile. These primary acetylene products are further converted to produce the following products:

Exhibit 1

[a] Vinyl chloride - Polyvinyl chloride (PVC) plastics.

[b] Acetaldehyde - Converted into acetic acid (for cellulose acetate fibers and plastics and for polyvinyl acetate adhesives and emulsion paints), into plasticizer alchohols and into paint resin intermediates.

[c] Per- and trichlorethylene - Dry-cleaning and grease-removing solvents.

[d] Vinyl acetate - Polyvinyl acetate emulsion paints and adhesives.

[e] Chloroprene - Specialty oil-resistant rubbers.

[f] Acrylonitrile - Basis for acrylic fibers and intermediate for adiponitrile, a raw material for nylon.

[2] Since more severe conditions are required to produce acetylene than olefins from petroleum sources, it is inevitably more expensive. Efforts have therefore been made to develop other routes to the products which have hitherto been based on acetylene and, of those listed above, all except trichlorethylene can now be made

competitively from less unsaturated hydrocarbons, leading to an anticipated decline in the importance of acetylene as a petrochemical intermediate.

(C) Removal of Hydrogen to obtain aromatics -- The most commonly used process for removing hydrogen to yield aromatics is catalytic reforming. This process can be used to produce aromatic ring compounds both from naphthenes and from paraffins. The aromatics extracted from the paraffins and naphthenes are then distilled to give benzene, toluene and the xylenes as three separate fractions. These three aromatics are of substantial importance as chemical raw materials.

Exhibit 1

[1] From the point of view of their chemical structures, benzene is the simplest of the aromatic compounds since it is a six-membered ring of carbon atoms with one hydrogen atom attached to each. In toluene there is an additional carbon atom attached to one of the members of the ring. In xylene there is one additional carbon atom attached to each of two members of the ring. There are three xylenes (differentiated by the prefixes "ortho", "meta" and "para"), differing only in the relative position of the two extracyclic carbon atoms.

[2] In addition to their use in gasoline

and in intermediate conversion (for example, the conversion of toluene into benzene through the process of hydrodealkylation), aromatic products are used to manufacture various chemical intermediates and commercial products, including the following:

Exhibit 1

[a] Benzene:

[i] Styrene - Polystyrene plastics and synthetic rubber.

[ii] Phenol - Intermediate for resins.

[iii] Cyclohexane, produced by the catalytic hydrogenation of benzene, is an intermediate for nylon production.

[iv] Dodecylbenzene - Detergents.

[v] Aniline - Dyestuffs and rubber additives.

[vi] Maleic anhydride - Raw material for polyester glass-fiber plastics.

[b] Toluene

[i] Toluene diisocyanate - Plastic foams.

[ii] Phenol - Intermediate for resins.

[iii] TNT - Explosives.

[iv] Solvents - Paints and lacquers.

[c] Xylenes-- Xylenes are separated into ortho, meta, and para xylenes through a combination of fractionation (boiling point separation) and crystallization (freezing point separation)

[i] Solvents (mixed xylenes) - Paints, lacquers and insecticides.

[ii] Terephthalic acid (from paraxylene) - Polyester fibers.

[iii] Phthalic anhydride (from ortho-xylene) - Phthalatic plasticizers and resins.

[iv] Isophthalic acid (from meta-xylene) - Resins.

(ii) Products derived by oxidation --

(A) Oxidation without alteration of the carbon structure -- Methods of oxidation of petroleum hydrocarbons without change of carbon structure have only recently been developed to a commercial scale. The feedstock is a linear (or straight-chain) paraffin and the product is an alcohol which is marketed as a basis for a biodegradable detergent.

Exhibit 1

(B) Oxidation with rupture of the carbon chain -- More vigorous methods of oxidation, in particular using higher temperatures, introduce more oxygen into the hydrocarbon and result in the rupture of the carbon structure.

(iii) Products derived by chlorination with rupture of the carbon chain -- Chlorination of light hydrocarbons such as propane at a temperature of 500-650°C leads to simultaneous ruptures of the carbon chain producing carbon tetrachloride and hydrogen chloride. Under these conditions, carbon tetrachloride undergoes a further reaction with the formation of perchlorethylene, an extensively used dry-cleaning agent.

(iv) Products derived by sulphuration -- While sulphur will react with hydrocarbons gen-

erally, the resulting products have not been found of commercial value except when applied to methane. The reaction, which occurs at 650-700°C in the presence of a catalyst, results in the formation of carbon disulphide, used for the manufacture of viscose rayon and regenerated cellulose film (Cellophane). It is also employed as an intermediate for the production of carbon tetrachloride though, as already noted, this product may also be obtained by chlorination of methane.

Exhibit 1

(v) Isolation of Carbon -- By cracking hydrocarbons at high temperatures (1,300-1,650°C) complete decomposition into hydrogen and carbon is effected. The resulting carbon in finely divided particles is known as carbon black which is used for the reinforcement of natural and synthetic rubber in tires for motor vehicles, as well as in plastics, printing inks, lacquers and phonograph records. Aromatics with high carbon content are the most desirable feedstocks for carbon black production.

(vi) Isolation of Hydrogen - Two main methods are available for the production of hydrogen from petroleum hydrocarbons, namely, steam reforming and partial oxidation with a restricted supply of oxygen. Both produce a so-called "synthesis gas". In each method the carbon is removed and the hydrogen released for further reaction as required. The principal uses of hydrogen in chemi-

cal manufacture are for the following products:

(A) Ammonia -- The production of Ammonia takes place under very severe conditions in the presence of an iron catalyst, high pressures and temperatures of 450-500°C. It is an important source of nitrogen in fertilizers and a source of urea which serves as a fertilizer and cattle feed supplement as well as a component of plastics, adhesives, finishes and paper and textile treatment.

Exhibit 1

(B) Methanol -- Methanol can be produced from hydrogen through adjusting the proportion of hydrogen and the oxides of carbon derived in the production of hydrogen in a so-called "synthesis gas". Methanol finds commercial application as an anti-freeze, in resins, explosives and clear plastics, among other uses.

(C) Oxo-alcohols -- From a synthesis gas of different composition alcohols are produced through reaction with olefins. The alcohols thus produced are employed in solvents and plasticizers.

(21) The End Products of Petroleum Production -- The end products derived from petroleum are the result of one or more consecutive processes which may be generally described under the four general headings of refining operations, petrochemical operations, primary chemical processing and secondary chemical processing. No fixed classification is possible for many processes since the processing in many cases is continuous and

the separation of one process from the next, while helpful to an understanding of the overall processing, is somewhat arbitrary. The principal groups of end products and the processes through which they are derived may be summarized as follows:

(a) Fuel and lubricants -- Both from the refining operations and from the subsequent petrochemical operations fuel and lubricants are obtained for gasoline and diesel vehicles, airplanes and marine vessels, home heating oil and oil for industrial processes requiring the sustained generation of heat.

Exhibit 1

(b) Fabricated plastics -- In the fabrication of plastic products, two major categories of products are commonly identified:

(i) Heat workable plastic products include phonograph records, plastic toys, vinyl flooring, artificial leather and automobile upholstery. The polyvinyl chloride (PVC), polyethylene and polypropylene resins which are the common source of such products are the culmination of a series of processing steps concluded in secondary chemical processing.

(ii) Heat resistant plastic products include electrical appliance parts, electric switch and control hardware, and cookware handles. The phenolic resin (Phenol formaldehyde polymer) which is one common source of these products is similarly the culmination of a series of processing steps concluded in secondary chemical processing.

(c) Rubber products -- Synthetic rubber is the result of secondary chemical processing commonly employing the butadiene and styrene produced in petrochemical and primary chemical processing. Synthetic rubber is used today in the manufacture of motor vehicle tires and tubes, rubber gaskets and various hose and tubing applications.

(d) Fabrics -- Nylon and polyester fibers are both derived from petroleum. Nylon for spinning and weaving results from the secondary chemical processing of adipic acid which in turn is derived from cyclohexane produced in petrochemical operations. Polyester is the product of the secondary chemical processing of Terephthalic acid which in turn is derived from para-xylene produced in petrochemical operations. Polyolefins are also produced as a fiber for similar uses by polymerization of ethylene or propylene.

Exhibit 1

(e) Industrial chemicals -- The broad range of organic chemicals used in industry are obtained at all four stages of the processing of petroleum. Some are by-products of basic refining operations. As the variety of products proliferates in the succeeding petrochemical operations and the primary and secondary chemical processing, there are hundreds of chemicals available for industrial use.

(f) Agricultural chemicals -- Fertilizers, pesticides and insecticides can all be derived from petroleum. Petrochemical operations produce basic fertilizers and subsequent chemical processing

multiplies the types of product available and result in the production of many of the commonly employed pesticides and insecticides.

(g) Drugs, cosmetics and detergents -- These consumer products, which in some instances have industrial applications, are the result of a series of processing steps from refining to secondary chemical processing.

Exhibit 1

(h) Paints, dyes and finishes -- These products have important industrial applications and are also important consumer items. A few products can be derived from petrochemical operations, but the majority are the result of both primary and secondary chemical processing after which they are combined with raw materials from other than petrochemical sources in the manufacture of the ultimate products.

(22) Summary of the Petroleum and Petrochemical Business --

(a) Exploration for and production of crude oil -- After the exploration for and establishment of a proven reserve, development wells are drilled and gathering systems are built to provide for the handling of crude oil produced from the wells. Production of crude oil generally commences when field development is only partially complete as soon as sufficient surface facilities are complete to permit shipment of the oil. The oil as produced from the well, together with gas and water found with the oil, is conveyed through a "flowline" from the well-head to a "gathering center". Facilities at the

"gathering center" generally handle production from several wells.

(b) Separation of crude oil from gas and other substances -- Oil as produced varies considerably from field to field in the physical characteristics of the crude oil itself and in the amounts and quality of gas and salt water produced with it. The size and nature of the plant required for processing to prepare crude oil and gas for shipment depend on the volume of gas and water found with the oil and the pressure of the produced mixture at the wellhead. A crude with little gas in it can be passed directly into a "flow tank" or separator operating at approximately atmospheric pressure in which the separation of gas from the crude oil can take place in a single operation or stage. High pressure crude with a high gas/oil ratio must be passed through a "multi-stage separation" to minimize loss of compounds with a low boiling temperature in the produced gas and loss of oil through formation of a finely divided oil spray and its entrainment in the produced gas. In this method, the produced mixture passes through a number of steel vessels connected in series with a successive reduction of pressure and removal of part of the gas from each vessel. Produced gas may be transported by pipeline for sale or used as an energy source for oilfield activities. Valuable liquid components in the gas may be separated in a gas processing plant. In many cases, salt water in the crude would occupy

Exhibit 1

vital space in storage and transport facilities and would also cause grave corrosion problems in the refinery. It is therefore necessary to reduce the salt water content to an acceptable level before the oil is transported to the refinery. Some water separates freely from the crude oil and is drained off at the gathering station. In the event water is present as a water-in-oil emulsion, the microscopic droplets of water are separated in a dehydration plant where by heating and addition of chemicals or by passing the crude oil between electrodes with an induced electrical field, coalescense of the water is promoted and it is then separated by density difference.

Exhibit 1

(c) Transportation of crude oil to the refinery -- After the initial separation of gas and salt water from the crude oil at the gathering center, the crude oil is transported to the refinery. This transportation may be accomplished by pumping it directly by pipeline to the refinery, or by pipeline to a marine terminal, for loading on a tanker for transportation to another terminal, for off-loading and further transportation to the refinery. In certain oil production areas, terrain or other factors may require use of truck or rail transport where economically feasible.

(d) Refining and further processing -- After the refining and further processing of petroleum into primary, intermediate and final products, as described in paragraphs (17), (18), (19) and (20),

the various products proceed through a variety of distribution channels. It is a unique feature of petroleum and petrochemical products, that the product is normally unseen and contained continuously in pipes, tanks, processing equipment and storage facilities from the time it leaves the producing formation in the ground until it reaches the point of consumption after final processing.

Exhibit 1

(e) Marketing and distribution of products -- The marketing of oil and petrochemical products involves a widely diverse system of sale and distribution.

(i) Automotive fuel and lubricants reach the consumer through the service station outlets which are the most visible part of the marketing of products. To reach the service station it is frequently necessary for the products to be transported over large distances following final processing by sea, pipeline, rail and road with intermediate storage en route. Shorter distances between production facilities and consumer outlets reduces transportation costs and give the seller a price advantage over competitors with greater transportation costs.

(ii) Aviation fuel has undergone dramatic change in recent years to meet the requirements of modern jet engines. The change from piston engines to the jet engine has required a change in fuel specification and properties, not in quality. The piston engine utilized a high octane number gasoline type fuel while

the jet engine is designed to utilize fuels ranging from gasoline to kerosine. Most commercial aviation jet fuel is a kerosine type material with special specifications for freezing point, cleanliness and chemical composition. Octane number is not a part of the specifications for jet engine fuel. Actually, the most desirable jet engine fuels have a low octane number, just the reverse of piston engine fuels. These changes in aviation fuels would be of little consequence had they been without parallel progress in the design of special equipment for fuel storage and movement of the product from refinery to aircraft. Stringent controls of quality are maintained at all stages to protect against the delivery of off-specification or contaminated fuel which might contribute to inflight power failure.

Exhibit 1

(iii) Marine fuels range from gasoline and diesel fuel for smaller vessels to vast quantities of bunker oils for large ships. These products are delivered from facilities ranging from floating service stations to chains of bunkering installations at ports around the world to service ships in marine commerce.

(iv) Industrial consumption of petroleum products is large in terms of volume, accounting for more than half the total output of products from refineries in many countries. The industries range from the production of steel and lipsticks, to road haulage and the construction of houses and

harbors. Energy in the form of fuel represents the largest percentage of an oil company's trade with manufacturers. A wide range of lubricants is also marketed. Large quantities of lubricating oils are required in metal-working processes but the highly specialized grades used, for example, in watch-making can be measured in pints. The rubber and cosmetics industries both require process oils, with an automotive tire containing a significant percentage of its weight in process oil. The principal feature of this industrial market is the relatively small number of customers with individualized requirements for "made to specification" products for use in part of a chemical manufacturing process.

Exhibit 1

(v) Fuels and lubricants for tractors and other mechanized implements constitute the major share of agricultural markets for petroleum products. Fuels for heating, crop drying and flame cultivation, petroleum-derived fertilizers, soil stabilizers, pesticides and now even protein feeds for animals are parts of the consumption of petroleum products in connection with farming.

(vi) Bulk sales of most kinds of petroleum products are made by refiners outside the other established distribution channels to independent marketers, who have their own particularly large consumers (such as chemical companies, power stations, cement plants and mining enterprises) and

other oil companies.

E. The Activities of the Gibbs Group and Related Developments Pertaining to a Third Refinery in Puerto Rico

(23) In the spring of 1961, John H. Gibbs sent a letter proposal regarding a third refinery in Puerto Rico dated March 30, 1961 to Mr. J. Diaz Hernandez, executive director for the continental branch of EDA, which letter has been marked at pretrial proceedings as Defendant's Exhibit 432-A for identification.

Exhibit 1

(24) EDA in June 1961 and thereafter undertook a program of actively encouraging potential sponsors of a third refinery to build such a project in Puerto Rico. Over the course of the next four years, EDA had discussions with various potential sponsors of such a project including Petroquimica Puertorriquena, Inc. ("PPI", a company organized by John H. Gibbs), Jules Flescher (Ferma Corporation), John C. Worthy (President of Pipeline Welding & Construction Company) and Albert Joseph Cella ("the Gibbs-PPI group"); Gulf Oil Corporation; Texaco Inc.; Monsanto Company; Ashland Oil Company; Union Texas Petroleum Corporation (a division of Allied Chemical Corporation); E. M. Warburg & Co., Inc.; and the Standard Oil Company (New Jersey).

(25) On June 15, 1961, Ivan E. Irizarry, Industrial Representative of EDA in New York sent a letter to John H. Gibbs which has been marked at pretrial proceedings as Defendant's Exhibit 432-M for identification.

(26) A preliminary draft of prospectus for Petrofina Puertorriquena, Inc. was prepared dated July 25, 1961, which has been marked at pretrial proceedings as Defendant's Exhibit 452 for identification. In August 1961, the Gibbs-PPI group arranged with Jack P. Coan and the consulting firm of which he was president and principal stockholder, Omega Management Inc. ("Omega"), to assist in the preparation of a feasibility study and brochures for a refinery in Puerto Rico. In this connection, Omega entered into an agreement with Universal Oil Products Company ("UOP") under date of September 12, 1961, which agreement is set forth in letters which have been marked at pretrial proceedings as Defendant's Exhibits 404 and 404A for identification and provides for UOP to furnish to Omega a general feasibility study of such a refinery in Puerto Rico. This UOP study entitled "Processing and Economic Data for a Proposed Puerto Rico Refinery" dated October 1961 was forwarded to Omega on October 13, 1961, which study and covering letter have been marked at pretrial proceedings as Defendant's Exhibits 410B and 410C for identification.

Exhibit 1

(27) On October 10, 1961 the Gibbs-PPI group met with Ivan Irizarry, an official of EDA, and the meeting is described in a memorandum which has been marked at pretrial proceedings as Defendant's Exhibit 432-X for identification. On October 26, 1961 Sam Van Hyning, an economic consultant employed by EDA, sent two memoranda to Durand which have been marked at pretrial proceedings as Defendant's Exhibits 432-Y-2 and 432-Y-3 for

identification. On November 1, 1961 Irizarry prepared a memorandum of his meeting with the Gibbs-PPI group which has been marked as Defendant's Exhibit 432-Z for identification and on November 2, 1961 he prepared a memorandum of his telephone conversation with Van Hyning which has been marked at pretrial proceedings as Defendant's Exhibit 432-AC-1 for identification. On November 3, 1961 Coan met with Van Hyning in Puerto Rico concerning a proposal by PPI and the meeting is described in a memorandum prepared by Van Hyning dated November 8, 1961 which has been marked at pretrial proceedings as Defendant's Exhibit 432-AE for identification. Van Hyning sent a letter to Coan dated November 8, 1961 which has been marked at pretrial proceedings as Defendant's Exhibit 432-AI for identification and Coan sent a letter to Van Hyning dated the same date, a copy of which has been marked at pretrial proceedings as Defendant's Exhibit 432-AG for identification. By letter of November 24, 1961 and a memorandum of the same date, which have been marked at pretrial proceedings as Defendant's Exhibits 432-AM and 432-AL for identification, Coan transmitted to Diaz Hernandez a proposed letter which he sought to have Durand, on behalf of EDA, write to PPI, care of Omega Management Inc., to record EDA's support of the PPI proposal.

Exhibit 1

(28) Under Presidential Proclamation 3279 of 1959, the United States Oil Import Control Program had been established and the Department of the Interior had issued Oil Import Regulations in implementation of the Program. EDA had contact with the responsible officials

of the Interior Department from time to time to remind the Department of the importance of assuring adequate oil supplies for the operation of the two existing refineries in Puerto Rico. The officials of EDA recognized that there would have to be changes made in the Oil Import Control Program for a third refinery to be built in Puerto Rico.

Exhibit 1

(29) Rafael Durand and Sam Van Hyning met at the San Juan airport with the Secretary of the Interior, Stewart L. Udall in December 1961 to discuss Puerto Rico's paucity of indigenous industrial raw materials and the fact that a growing petrochemical industry could partially compensate for this scarcity and that such an industry should not conflict with the basic objectives of the Oil Import Control Program.

(30) During December 1961, Gibbs in the company of Coan retained Oscar L. Chapman, of Washington, D.C., and his law firm as counsel to PPI to assist in obtaining the necessary oil import authorization for use in connection with the proposal for a refinery in Puerto Rico which the Gibbs-PPI group was then seeking to develop. The letter setting forth the terms of retainer dated December 11, 1961 has been marked at pretrial proceedings as Defendant's Exhibit 463 for identification. Chapman in turn requested Bruce K. Brown, a petroleum and petrochemical consultant, to advise him with respect to the proposal of the Gibbs-PPI group.

(31) EDA under date of December 12, 1961 sent a letter to PPI, care of Omega Management, Inc., stating its support for the PPI proposal, which letter has been

marked at pretrial proceedings as Defendant's Exhibit 432-AP for identification.

(32) In February 1962, the efforts of the Gibbs-PPI group to develop a proposal for a refinery in Puerto Rico were discontinued and the retainer of Chapman and his law firm as counsel to PPI was terminated.

F. The Activities of Brown in Conjunction with Chapman and Coan Pertaining to a Refinery in Puerto Rico

Exhibit 1

(33) Commencing in December 1961, at the request of Chapman, Brown undertook to analyze the PPI project. Brown submitted a letter and memorandum dated December 22, 1961 to Chapman which have been marked at pretrial proceedings as Defendant's Exhibits 289 and 287 for identification.

(34) In February 1962, after the efforts of the Gibbs-PPI group were discontinued, Chapman, Coan and Brown, and for a short period Gibbs individually, continued working together toward the development of a refinery in Puerto Rico. Coan asked UOP to perform a site survey for the location of a refinery in Puerto Rico and to evaluate the timing for engineering agreements, contractors' bidding, and construction necessary for completion of such a refinery. Pursuant to these requests, UOP provided in February 1962 a proposed schedule for the completion of the refinery, which has been marked at pretrial proceedings as Defendant's Exhibit 413 for identification, and in March 1962 provided a site survey for the possible location of a refinery, which has been marked at pretrial proceedings as Defendant's Exhibits 416 and 416A for identification.

In April 1962, pursuant to Coan's requests, UOP prepared and transmitted to Omega Management a revised and expanded general feasibility study for a refinery for Puerto Rico, based on a charge stock of 60,000 b/d of crude oil, which study has been marked at pretrial proceedings as Defendant's Exhibits 420 and 423 for identification.

(35) On March 7, 1962 Coan and Gibbs visited the New York offices of Phillips Petroleum Company. Following this meeting, A.D. Fischbeck, a manager for the development of petrochemical projects in Phillips' New York office, prepared a memorandum which has been marked at pretrial proceedings as Plaintiff's Exhibit 8 for identification and sent a letter to Coan dated March 9, 1962 which has been marked at pretrial proceedings as Plaintiff's Exhibit 142 for identification. A subsequent meeting attended by Fischbeck, Brown and Coan, Richard Fleming of the Research and Engineering Department of Sun Oil Company and Aimison Jonmard, Vice President of Planning for Celanese Chemical Company, was held on or about March 16, 1962, a memorandum of which has been marked at pretrial proceedings as Plaintiff's Exhibit 144 for identification. Thereafter Coan sent a letter dated March 22, 1962 to Fischbeck, which letter has been marked at pretrial proceedings as Plaintiff's Exhibit 143 for identification. Fischbeck sent a letter to Coan dated April 2, 1962 which letter has been marked at pretrial proceedings as Plaintiff's Exhibit 145 for identification.

Exhibit 1

(36) On May 16, 1962 Brown met with the following members of the Phillips' management in Bartlesville,

Oklahoma: W.C. Hewitt, Chairman of the Operating Committee; C.M. Kittrell, Vice Chairman; J.L. Kyser, Manager of Supply and Transportation; A.J. Head, Manager of Phillips Chemical Company; and P.M. Arnold, Manager of Research and Development. With a letter dated May 16, 1962 addressed to the attention of W.C. Hewitt, which letter has been marked at pretrial proceedings as Defendant's Exhibit 303 for identification, Brown presented to Phillips a memorandum, which has been marked at pretrial proceedings as Defendant's Exhibit 303A for identification.

Exhibit 1

(37) On May 9, 1962 Chapman and Brown met with Cordell Moore, Oil Import Administrator in the U.S. Interior Department. A memorandum of the conference was prepared by Brown which has been marked at pretrial proceedings as Defendant's Exhibit 302 for identification.

(38) Durand with a covering letter dated May 18, 1962, provided a letter, also dated May 18, 1962, addressed to Chapman as General Counsel of Puerto Rico Chemical Company, Inc., which letters have been marked at pretrial proceedings as Defendant's Exhibits 432-BY-1 and 432-BY-2 for identification.

(39) On May 31, 1962, a memorandum was sent by W.C. Hewitt of Phillips to William W. Keeler, which has been marked at pretrial proceedings as Plaintiff's Exhibit 22 for identification. On June 5, 1962 Hewitt sent a letter to Brown pertaining to Brown's presentation to Phillips on May 16, 1962, which letter has been marked at pretrial proceedings as Defendant's Exhibit 308 for identification.

G. The Efforts of Chapman and Coan to Develop Sponsorship for a Refinery in Puerto Rico during the Summer and Fall of 1962

(40) Brown in June 1962 withdrew from further participation with Chapman and Coan in the attempt to develop a refinery in Puerto Rico. Chapman and Coan in July and August of 1962, explored the possibility of obtaining support for such a venture from a syndicate of investors in Puerto Rico headed by James J. Wilson, who was affiliated with the Insular Investments Corporation. Although the Wilson group expressed interest in the proposed project, Wilson did not agree with Chapman's terms for compensation for his services. Before the end of August 1962, Wilson expressed to Coan his lack of interest in proceeding further.

Exhibit 1

(41) On October 25, 1962, Coan sent a memorandum to EDA which has been marked at pretrial proceedings as Defendant's Exhibit 432-CR-1 for identification.

H. Some Developments During 1963

(42) Under date of March 20, 1963, EDA Administrator Rafael Durand sent a letter to Secretary Udall, with copy to Cordell Moore, Oil Import Administrator, which letter has been marked at pretrial proceedings as Defendant's Exhibit 399 for identification.

(43) In early August 1963 Chapman spoke with the President of Phillips, Stanley Learned. Chapman expressed confidence that the necessary oil import quota could be obtained by Phillips for a project in Puerto Rico, and Learned expressed interest in exploring this possibility. On August 7, 1963, Chapman and Michael W.

Shea, one of his law associates, met in Washington with representatives of Phillips. A memorandum of this meeting prepared by Michael Shea and dated August 8, 1963 has been marked at pretrial proceedings as Plaintiff's Exhibit 189 for identification.

(44) In October 1963 Coan arranged a meeting for representatives of Phillips with representatives of the New York office of EDA, including Diaz-Hernandez.

Exhibit 1

(45) A memorandum dated November 7, 1963, was delivered by Coan to Waldby which has been marked at pretrial proceedings with a covering letter as Plaintiff's Exhibit 185 for identification. By letter agreement dated November 22, 1963 Phillips retained Coan and Omega as from November 1, 1963, which letter agreement has been marked at pretrial proceedings as Plaintiff's Exhibit 6 for identification.

I. Phillips' Submission to EDA of a Proposal for a Project in Puerto Rico

(46) Stanley Learned addressed a letter dated December 16, 1963 to Rafael Durand. The letter, which has been marked at pretrial proceedings as Plaintiff's Exhibit 271 for identification, was taken to Puerto Rico and delivered to Rafael Durand by Diaz-Hernandez prior to December 20, 1963.

(47) In January 1964 executives of Phillips met in Puerto Rico with officers of EDA and other agencies of the Commonwealth Government to explain Phillips' proposal for establishing a project in Puerto Rico. On January 3, 1964 Stanley Learned, Paul J. Parker, W.C. Hewitt and Roy Waldby of Phillips and Martin Friedman of the law

firm of Chapman & Friedman, counsel to Phillips, met in San Juan with EDA Administrator Rafael Durand, Sanchez Rivera, President of the Puerto Rico Industrial Development Company (PRIDCO) and Sam Van Hyning, a consultant to EDA. Also on January 3, 1964, the Phillips representatives met with Diaz-Hernandez, Van Hyning, and certain officers of PRIDCO, including Sanchez Rivera, President, Varilo Oyding, Vice President for Finance and Rafael Ignacio, Vice President, and Jose Munez, Assistant Vice President for Development. On January 4, 1964, the Phillips group, accompanied by Owen Martinez of the PRIDCO staff, toured the Island by plane and car to view possible sites on the south and west coasts of Puerto Rico for the proposed complex.

Exhibit 1

(48) At the meeting on January 3, 1964 with representatives of the Commonwealth Government, Learned stated that the purpose of the visit was to explain the nature of Phillips' proposal and the organization and capabilities of Phillips to carry out such a proposal. Following Learned's statement, W.C. Hewitt described the various business activities of Phillips. At the same time, with a letter to Durand dated January 2, 1964, a brochure was submitted by the Phillips representatives to EDA entitled "Establishment of a Core Chemical Industry in Puerto Rico". The letter of transmittal has been marked at pretrial proceedings as Defendant's Exhibit 506 and the brochure as Plaintiff's Exhibit 221 for identification.

(49) Following the presentation to officials of

EDA and PRIDCO in Puerto Rico by Phillips personnel in January 1964, the officials of EDA made various suggestions for the manner in which the proposal might be presented to the U.S. Interior Department.

J. Submissions to the Interior Department by EDA and Phillips: January - June 1964

Exhibit 1

(50) Rafael Durand, under date of January 14, 1964 sent a telegram to Secretary of the Interior Udall which telegram has been marked at pretrial proceedings as Defendant's Exhibit 341 for identification.

(51) On January 15, 1964, Chapman and his law firm filed a Petition for Allocation of Unfinished Oil-Puerto Rico on behalf of Phillips with the Oil Import Appeals Board which petition has been marked at pretrial proceedings as Defendant's Exhibit 470 for identification.

(52) On January 28, 1964, Rafael Durand sent a letter to Secretary Udall which letter has been marked at pretrial proceedings as Plaintiff's Exhibit 190 for identification.

(53) Chapman and his law firm submitted to the Oil Import Appeals Board in May 1964 a brief entitled "Brief in Support of Petition For Allocation of Unfinished Oils-Puerto Rico" which has been marked at pretrial proceedings as Plaintiff's Exhibit 327 for identification.

(54) On May 1, 1964 Chapman and his law firm submitted to the Oil Import Administrator, Cordell Moore, a letter with accompanying memorandum entitled

"Memorandum in Support of Request for Recommendation for Increase in Maximum Level of Imports of Unfinished Oils-Puerto Rico". A copy of the brochure marked as Plaintiff's Exhibit 282 for identification and of the "Brief in Support of Petition for Allocation of Unfinished Oils-Puerto Rico" marked as Plaintiff's Exhibit 327 for identification also were submitted with the letter. The letter dated May 1, 1964 and the accompanying memorandum have been marked at pretrial proceedings as exhibits identified by Chapman in response to Defendant's question No. 46. Under date of June 19, 1964, EDA Administrator Rafael Durand sent a letter to Assistant Secretary John M. Kelly of the Department of the Interior, which letter has been marked at pretrial proceedings as Defendant's Exhibit 401 for identification.

Exhibit 1

K. The Hearing in July 1964 Before the Oil Import Appeals Board on the Phillips' Application and the Supplementary Submissions

(55) The Phillips' application for an import license created serious controversy in the oil industry, with competing oil companies opposing the granting to Phillips of the import authorization essential for the Puerto Rican project to go forward. On July 31, 1964, a public hearing on the application of Phillips for an oil import authorization for Puerto Rico was held before the Oil Import Administration of the Department of the Interior, at which EDA supported the Phillips' application and various representatives of other oil companies and oil industry groups appeared in opposition.

(56) At the hearing on July 31, 1964, testifying in support of the Phillips' application, were EDA Administrator Rafael Durand, accompanied by Amadeo I.D. Francis and Sam Van Hyning (Transcript, pp. 5-27); Stanley Learned, President and Chief Executive Officer of Phillips (Transcript, pp. 27-35, 76-89); Roy M. Waldby, Manager, Petroleum Projects Development, of Phillips (Transcript, pp. 35-43, 86-87, 89); Carl M. Kron, Manager, Marketing Research for elastomers, fertilizers and chemicals for Phillips (Transcript, pp. 44-55, 87-88); and W.W. Keeler, Chairman of the Executive Committee of Phillips (Transcript, pp. 55-76). Phillips presented five exhibits in support of its presentation which have been marked at pretrial proceedings as Defendant's Exhibit 353 and Plaintiff's Exhibits 355A to 355D, inclusive, for identification.

Exhibit 1

(57) At the hearing on July 31, 1964, testifying in general in opposition to the Phillips' application for an oil import license were the following representatives of other oil companies and the oil industry: M.A. Wright, Director and Executive Vice President of Standard Oil Company (New Jersey) (Transcript, pp. 90-93); Fred A. Billups, President of Tropical Gas Company, Inc. (Transcript, pp. 94-108); R.D. Bent, Vice President and Director of Atlantic Refining Company (Transcript, pp. 109-118); Leon Hess, of Hess Oil & Chemical Corporation (Transcript, pp. 119-128); Sam H. Casey, President, Commonwealth Oil Refining Company, Inc. (Transcript, pp. 129-159); Wilson Colberg, Esq.

on behalf of Compania Petrolera de Puerto Rico, Inc. (Transcript, pp. 160-167); C.G. Drescher, President of St. Clair Refining Company (Transcript, pp. 168-172); James F. Clifton, Executive Vice President of Texaco Inc. (Transcript, pp. 172-177); Jerry McAfee, Senior Vice President of Gulf Oil Corporation (Transcript, pp. 178-184); Russell B. Johnson, Esq. and Stanley Farrelly on behalf of Globe Oil Company Virgin Islands, Inc. (Transcript, pp. 185-195); George Meyers, Executive Vice President of Standard Oil Company of Indiana (Transcript, pp. 195-200); Barney Templeton, Manager, Purchases, Sales and Imports of SOCONY Mobile Oil Company, Inc. (Transcript, pp. 201-203); L. Dan Jones, General Counsel of the Independent Petroleum Association of America (Transcript, pp. 204-218); and J.G. Jiminez, Vice President of Tidewater Oil Company (Transcript, pp. 219-221).

Exhibit 1

(58) In August 1964, following the public hearing conducted by the Oil Import Administration of the Department of the Interior, EDA and Phillips submitted supplemental statements in support of Phillips' application for an oil import allocation dated respectively August 24, 1964 and August 26, 1964, which have been marked at pretrial proceedings as Defendant's Exhibits 359 and 358 for identification.

L. The Initial Determination of the Secretary of the Interior in February 1965 and the Negotiation of the Agreement between Phillips and EDA

(59) On February 11, 1965, Secretary of the Interior Udall issued a statement which has been

marked at pretrial proceedings as Defendant's Exhibit 364 for identification.

(60) Following the Secretary of the Interior's announcement in February 1965, representatives of the Puerto Rican Government and Phillips in February 1965 entered into negotiations as to the definitive terms and conditions upon which Phillips would establish a project in Puerto Rico.

Exhibit 1

(61) Follcwing the Secretary of the Interior's announcement in February 1965, there were renewed protests from representatives of other oil companies and oil industry groups. Under date of March 8, 1965 EDA Administrator Rafael Durand submitted a letter and memorandum to Secretary Udall summarizing the history of EDA's efforts to promote a third refinery in Puerto Rico, which letter and memorandum have been marked at pretrial proceedings as Defendant's Exhibits 366 and 367 for identification. Also under date of March 8, 1965, Learned sent a letter to Assistant Secretary John M. Kelly of the Interior Department which letter has been marked at pretrial proceedings as Plaintiff's Exhibit 86 for identification.

(62) During March, 1965 additional public hearings were held in the Interior Department with respect to the Mandatory Oil Import Program. At these hearings, opponents of the Phillips' proposal recommended revisions in the import program as set forth in Appendix B to the statement of H.A. True, Jr., President of the Independent Petroleum Association

of America, given on March 10, 1965, which statement has been marked at pretrial proceedings as Plaintiff's Exhibit 433 for identification and Appendix B to that statement as Plaintiff's Exhibit 435 for identification. In addition, Sam H. Casey, President of Commonwealth Oil Refining Company, Inc. presented a statement which has been marked at pretrial proceedings as Plaintiff's Exhibit 436 for identification. EDA Administrator Rafael Durand submitted a Supplemental Statement on March 22, 1965 which has been marked at pretrial proceedings as Defendant's Exhibit 368 for identification and Learned submitted a statement in a letter to Secretary Udall dated March 22, 1965 which has been marked at pretrial proceedings as Defendant's Exhibit 369 for identification.

Exhibit 1

(63) On May 14, 1965, the Department of the Interior released the text of a letter from Secretary Udall, dated May 11, 1965, to Governor Roberto Sanchez Vilella of Puerto Rico and Stanley Learned, President of Phillips, which release and letter have been marked at pretrial proceedings as Defendant's Exhibits 372 and 371 for identification.

(64) Following the Secretary of the Interior's announcement of May 14, 1965, Phillips and the Commonwealth Government completed and entered into an agreement on May 27, 1965 which has been marked at pretrial proceedings as Plaintiff's Exhibit 100 for identification.

(65) In connection with the agreement between

EDA and Phillips concerning the establishment of a core petrochemical facility in Puerto Rico, as a result of further discussions between EDA and Phillips, Durand sent a letter dated May 27, 1965 to Learned, which has been marked at pretrial proceedings as Plaintiff's Exhibit 101 for identification. In addition, Learned sent a letter dated June 11, 1965 to Secretary of the Interior Udall, which has been marked at pretrial proceedings as Plaintiff's Exhibit 105 for identification, in response to the Secretary's request to clarify the meaning of Phillips' commitment to limit motor fuel production of the project "to a maximum of 49.6% of the net charge stock used".

Exhibit 1

M. The Continuing Opposition and the Amendment in December 1965 of the Oil Import Proclamation

(66) Opposition from representatives of other oil companies and oil industry groups continued after the May 14, 1965 announcement of the Secretary of the Interior. On June 18, 1965, the Secretary made an announcement which has been marked at pretrial proceedings as Defendant's Exhibit 373 for identification. Following this announcement, the Governor of Puerto Rico, Roberto Sanchez Vilella, spoke to Secretary Udall by telephone and sent a letter to the Secretary dated June 29, 1965, which has been marked at pretrial proceedings as Defendant's Exhibit 374 for identification.

(67) On July 2, 1965 the Office of the Secretary of the Interior announced the establishment of an inter-agency committee to review proposed modifi-

cations of the Mandatory Oil Import Program established by Presidential Proclamation 3279, which announcement has been marked at pretrial proceedings as Defendant's Exhibit 377 for identification.

(68) While the Phillips' application for an oil import allocation and other amendments of the Mandatory Oil Import Program were being considered by the special cabinet committee, EDA Administrator Rafael Durand, on August 8, 1965, issued a statement which has been marked at pretrial proceedings as Plaintiff's Exhibit 115 for identification.

Exhibit 1

(69) Learned sent a letter dated November 12, 1965 to Cordell Moore, Administrator of the Oil Import Administration, which letter has been marked at pretrial proceedings as Plaintiff's Exhibit 117 for identification.

(70) On November 10, 1965 EDA Administrator Durand met in Washington with Lee White, special counsel to the President. Governor Sanchez of Puerto Rico sent a letter dated November 13, 1965, to President Johnson which has been marked at pretrial proceedings as Defendant's Exhibit 379 for identification. Durand sent a letter dated November 14, 1965 to Lee White which letter has been marked at pretrial proceedings as Defendant's Exhibit 380 for identification. On December 4, 1965 Durand again wrote to White. This letter has been marked at pretrial proceedings as Defendant's Exhibit 381 for identification.

(71) By Proclamation dated December 10, 1965

President Johnson amended the Mandatory Oil Import Program (as established by Presidential Proclamation 3279), providing, inter alia, that the Secretary of the Interior may grant, in instances in which the Secretary determines that such action would not impair the accomplishment of the objectives of the Proclamation, "allocation of imports of crude oil and unfinished oils into Puerto Rico to persons as feedstocks for facilities ... which in the judgment of the Secretary will promote substantial expansion of employment in Puerto Rico through industrial development." The Proclamation modifying Proclamation 3279 has been marked at pretrial proceedings as Defendant's Exhibit 383 for identification. In a related announcement which has been marked at pretrial proceedings as Defendant's Exhibit 382 for identification, the Department of the Interior noted that the December 10, 1965 Proclamation of the President was based on the "unanimous recommendation of the Department of the Interior and all other interested Federal Departments and Agencies."

Exhibit 1

(72) On December 21, 1965, the Secretary of the Interior issued amendments to Oil Import Regulation 1, effective January 1, 1966, (Code of Federal Regulations, Title 32A - National Defense, Appendix, Chapter X - Oil Import Administration), which have been marked at pretrial proceedings as Defendant's Exhibit 385 for identification. On December 23, 1965, Secretary of the Interior Udall issued an

order which has been marked at pretrial proceedings as Defendant's Exhibit 391 for identification. On April 18, 1973, Presidential Proclamation 4210 was issued, effective May 1, 1973, modifying Proclamation 3279.

N. Events in 1966 and 1967

(73) In January, 1966, Phillips Puerto Rico Core, Inc. ("CORE"), was incorporated under the laws of Delaware. In March, 1966 the capital stock of CORE was distributed 75 percent to Phillips, 25 percent to PRIDCO. (In 1970, Phillips purchased from PRIDCO the 25 percent of the capital stock of CORE then owned by PRIDCO.) On March 14, 1966 a contract was entered into between Phillips, PRIDCO and EDA which has been marked at pretrial proceedings as Plaintiff's Exhibit 134 for identification.

Exhibit 1

(74) Jack P. Coan died on March 27, 1966.

(75) On September 27, 1967 the complaint in the present action by Prudential New York against Phillips was filed in the United States District Court for the Southern District of New York.

3. Waiver of best evidence rule as to documents marked for identification -- The parties have stipulated, without conceding the admissibility on grounds of relevancy, materiality or competency, that copies of any documents or copies thereof which have been produced during pretrial discovery and marked prior to trial for identification, may be used or offered in evidence as though said copies were originals without regard to the best-evidence rule, provided,

however, that either party may, if it wishes, use or offer in evidence the original or another copy in addition to the copy used or offered in evidence.

4. Statement of the issues to be tried -- The trial of the action shall be based upon this Order and the issues to be tried are formulated by the Court as follows (see 1.d., supra, as to the issue concerning jurisdiction):

Exhibit 1

(1) Whether Prudential New York is the proper party in interest and has standing to assert the claims set forth in the complaint.

(2) Whether there was a legally enforceable joint venture created between Phillips and Prudential Connecticut relating to a petrochemically-oriented refinery in Puerto Rico. If so, what were its terms, who were the parties thereto, and was it terminated or breached at any time?

(3) Whether Prudential Connecticut in furtherance of any joint venture created between it and Phillips assumed any obligation, participated in any material manner in obtaining the necessary change in the Oil Import Control Program of the United States, made any material contribution to the planning, financing or construction of the petrochemical facility in Puerto Rico known as Phillips Puerto Rico Core, Inc. or made any other material contribution to the furtherance of any such joint venture.

(4) Whether Prudential Connecticut conceived, formulated, or developed any legally protected concept or material relating to a petrochemically-oriented refinery in Puerto Rico.

(5) Whether Prudential Connecticut disclosed to Phillips any legally protected concept or material relating

to a petrochemically-oriented refinery in Puerto Rico in reliance upona material misrepresentation by Phillips.

(6) Whether Prudential Connecticut disclosed to Phillips any legally protected concept or material relating to a petrochemically-oriented refinery in Puerto Rico as a result of a relationship of trust and confidence between Prudential Connecticut and Phillips.

Exhibit 1

(7) Whether Phillips appropriated any legally protected concept or material conceived, formulated or developed by Prudential Connecticut relating to a petrochemically-oriented refinery in Puerto Rico which Phillips utilized in a material way in the development and establishment of the petrochemical facility in Puerto Rico known as Phillips Puerto Rico Core, Inc.

(8) Whether Prudential Connecticut refrained from specific actions which it otherwise would have taken in reliance upon misrepresentations by Phillips from which forebearances Phillips derived a material benefit in the development and establishment of the petrochemical facility in Puerto Rico known as Phillips Puerto Rico Core, Inc.

(9) Whether Prudential New York commenced this action an unreasonable length of time after it or Prudential Connecticut or Prudential Delaware acquired notice of material facts giving rise to the claim in the complaint and whether the prosecution of this action at such time causes such injury and prejudice to Phillips that Prudential New York is not entitled to maintain this action.

(10) Whether Prudential New York is entitled to specific performance by Phillips of any joint venture agreement between Phillips and Prudential Connecticut. If so,

to what specific performance is Prudential New York entitled?

(11) Whether as a condition to any specific performance by Phillips it is entitled to reimbursement from Prudential New York for Phillips' investment in the planning, financing and construction of the petrochemical facility in Puerto Rico known as Phillips Puerto Rico Core, Inc.

Exhibit 1

(12) Whether Prudential New York is entitled to an order for an accounting to make a division between it and Phillips of all rights, properties, interests and assets relating to the petrochemical facility in Puerto Rico known as Phillips Puerto Rico Core, Inc.

(13) Whether Prudential New York is entitled to a judgment declaring Phillips to hold as trustee for Prudential New York the petrochemical facility in Puerto Rico known as Phillips Puerto Rico Core, Inc.

(14) [The issue as to what damages, if any, Prudential New York would be entitled to, will be framed following the Court's decision upon defendant's motion to strike the jury demand.]

(15) Whether Phillips is entitled to a judgment against Prudential New York dismissing the complaint in this action.

MEETING OF THE EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS OF PRUDENTIAL EQUITIES CORP. HELD ON SEPTEMBER 11, 1967

A 218

A meeting of the Executive Committee of the Board of Directors of Prudential Equities Corp. was held at the Canadian Club, Waldorf Astoria Hotel, Park Avenue and 50th Street, New York, New York, at 12:00 o'clock noon, local time, pursuant to a Notice of Meeting duly sent to all members. A copy of said Notice was directed to be filed with the records of the Corporation as part of these minutes.

There were present:

Nathan M. Shippee
Thomas L. Wilkerson
Michael F. Sassi
Charles J. Kushell, Jr.
Raymond J. Kerester
Frederick M. Glass
Frederick W. Lowey

being a quorum of the Executive Committee.

Miss Patricia R. Morel, Assistant Secretary of the Corporation was in attendance at the meeting. Also, Burton M. Abrams and Arnold M. Sheidlower, counsel for the Corporation, were present.

The Chairman indicated that the first order of business would be to review the proposed financial report to stockholders of the Corporation, which included the financial statements of the Corporation's subsidiary, Prudential Funds, Inc., for the fiscal year ended June 30, 1967, and the supplemental notes thereto, together with the Chairman of the Board's letter to stockholders

Exhibit 2

and a review of the operations of Prudential Funds, Inc., in narrative form. In view of the stress placed in the report upon the operations of Prudential Funds, Inc., it was suggested by the directors that the report be designated as a fiscal report rather than an annual report to stockholders of the Corporation. After discussion, it was upon motion duly made and seconded unanimously

> RESOLVED, that the form of fiscal report submitted to this meeting, with such change or changes therein as discussed and approved at this meeting, be, and the same hereby is, in all respects approved and adopted; and further
>
> RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed to do and perform all such acts and things to prepare said fiscal report, as so revised at this meeting, and mail the same to stockholders of the Corporation and to take all such other action as they may deem necessary, proper or convenient to carry out the purport of the foregoing resolutions.

The Chairman then called upon Mr. Raymond J. Kerester to report to the meeting on the progress of the Corporation's venture in Madrid, Spain, with respect to the construction of an office building complex. Mr. Kerester indicated that all efforts to date had been directed towards receiving governmental approval for the first of four proposed buildings to be constructed in the downtown area of Madrid. It was indicated that the proposed value of the project was approximately $12,000,000, of which $8,000,000 was allo

cated to the proposed buildings and $4,000,000 to the land on which the construction is proposed. The possible means of financing said amount was discussed at length. It was reported that the permit had been received from the Spanish government to proceed with the construction of the first building, which would have eighteen stories. The Chairman indicated that negotiations with respect to the construction of the first building would commence with the visit to Spain by the Chairman and Mr. Kerester on or about October 12, 1967.

In respect of the above proposed construction, the timetable for the same was summarized as follows: the architectural specifications for the building would take approximately eight months; signing of leases and other documents with respect to the building would take another four months after the specifications were drawn; and, completion of the building was estimated to be approximately twenty-four months from commencement of construction. The property, which comprises approximately thirty-five acres, was stated by the Chairman to be particularly attractive for development inasmuch as the Spanish government was prepared to grant a twenty-year tax free holiday with respect to the project.

The Chairman then declared that it had become necessary, by reason of the continued expansion of the operations of the Corporation's subsidiary, Prudential Funds, Inc., and particularly

the Prudential Drilling Funds programs administered by the latter, for Prudential Funds, Inc. to take additional quarters for its executive offices. The Chairman indicated that after long and hard searching Prudential Funds, Inc. had acquired appropriate space at 90 Broad Street, New York, New York, comprising one-half of the Fifth Floor of said building, and that it proposed to lease approximately 5,400 square feet for a term of fifteen years and six months at an annual rental of approximately $38,000. In this connection, the Chairman presented to the meeting the proposed form of lease with respect to these premises. Upon motion duly made and seconded, it was unanimously

> RESOLVED, that the form of lease presented to this meeting, whereby the Corporation's subsidiary, Prudential Funds, Inc., proposes to lease approximately 5,400 square feet of space at 90 Broad Street, New York, New York for a term of fifteen years and six months at an annual rental of approximately $38,000, be, and the same hereby is, in all respects, approved and adopted.

The Chairman then stated that it would be well to consider the various alternatives in respect to the recapitalization of Prufin Corporation, the objective of such recapitalization being to obtain funds for Prufin Corporation so that the latter may independently finance the varied activities of the Corporation. In this regard, the Chairman mentioned to the meeting various preliminary discussions which he intended to commence for the purpose of

obtaining additional funds for Prufin Corporation. A 222

The Chairman then indicated that in line with the expansion of the activities of Prudential Funds, Inc. in creating Drilling Funds for corporations, Prudential Funds, Inc. was actively pursuing corporate prospects, particularly those corporations which are experiencing accumulated earnings tax problems. In this regard, the Chairman reported to the meeting that Prudential Funds, Inc., had entered into a drilling fund venture with Mr. Harry Figgee, aggregating $1,200,000. In this regard, the Chairman presented to the meeting the form of the 1967 Drilling Venture with Harry Figgee.

The Chairman then stated that it would be appropriate for the Board to take action upon the previous action of the Stock Option Committee of the Corporation in having granted options to two employees of the Corporation. There then followed a discussion by the directors and upon motion duly made and seconded it was unanimously

> RESOLVED, that the action of the Stock Option Committee under the Qualified Stock Option Plan of the Corporation in granting to the employees listed below the options to purchase the number of shares of Common Stock of the Corporation set forth next to their respective names at the option price of $20.00 per share, be, and the same hereby is, in all respects ratified, confirmed and approved
>
> | | |
> |---|---|
> | Raymond J. Kerester | 1,000 |
> | Patricia R. Morel | 1,000 |

and it was further

Exhibit 2

RESOLVED, that the proper officers of this Corporation be, and they hereby are, authorized and directed to execute and deliver such options to the aforesaid employees covering the designated number of shares of Common Stock of the Corporation, in the form heretofore adopted by the Board of Directors, with such change or changes therein as shall be approved by the officers executing the same, with advice of counsel, the execution of such change or changes to be conclusive evidence of such approval; and it was further

RESOLVED, that upon the acceptance of each such option by the employee to whom it was granted, the exercise thereof, the full compliance with the terms thereof and the payment of the purchase price as provided for therein, the proper officers of the Corporation be, and they hereby are, authorized and directed to cause to be issued and delivered to the employee exercising the same the number of shares of Common Stock covered thereby; and it was further

RESOLVED, that upon the issuance and delivery of any of the authorized but unissued shares of Common Stock of the Corporation in accordance with the preceding resolutions, such shares of Common Stock, and each thereof so issued and delivered, shall be deemed and is hereby declared to be fully paid and non-assessable; and it was further

RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed to do and perform all such acts and things and to sign such documents and agreements and to take all such other steps as may be necessary, proper or convenient to carry out the intent of the foregoing resolutions and fully to perform the terms and provisions of the foresaid options.

The Chairman then stated that all routes towards settlement of the dispute with Phillips Petroleum Company

had been explored and had failed. Accordingly, the Chairman indicated to the meeting that the Corporation's subsidiary, Prudential Oil Corporation, had no alternative but to retain counsel to commence suit against Phillips Petroleum Company to recover the property right of Prudential Oil Corporation in the petrochemical complex in Puerto Rico, presently administered by Phillips Petroleum Company. In this regard, the Chairman indicated that Prudential Oil Corporation had retained the legal firms of Robert Conrad, Esq. of Washington, D.C. and Palmer, Searles, Delaney & Shaw of New York City to work with the office of Burton M. Abrams, counsel for the Corporation, for the purpose of commencing suit against Phillips Petroleum Company. There then followed a lengthy discussion among the directors.

Upon motion duly made and seconded, it was unanimously

> RESOLVED, that the proper officers of the Corporation's subsidiary, Prudential Oil Corporation, acting for and on behalf of Prudential Oil Corporation, be and they hereby are authorized and directed to take all steps necessary or advisable in the best interest of the Corporation and Prudential Oil Corporation to commence suit against Phillips Petroleum Company, including the retention of all counsel deemed necessary by said proper officers for the purpose, in order to recover the property rights of Prudential Oil Corporation in and to the petrochemical complex in Puerto Rico, presently administered by Phillips Petroleum Company; and further

RESOLVED, that the retention of the law firm of Robert Conrad, Esq. of Washington, D.C. and Palmer, Searles, Delaney & Shaw of New York City by Prudential Oil Corporation to work with the office of Burton M. Abrams, counsel for the Corporation, for the purpose of commencing the said suit against Phillips Petroleum Company be, and the same hereby is, in all respects ratified, confirmed, approved and adopted; and further

RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed to perform such acts and execute such documents, upon advice of counsel, as shall be deemed necessary and desirable to effectuate the foregoing resolutions.

The Chairman then stated that it would be advisable at this time to call the Annual Meeting of the Stockholders of the Corporation for the purpose of electing a Board of Directors and for such other business as may properly come before the meeting. In this connection, the Chairman presented to the meeting a copy of the proposed form of Notice of Meeting to be used in connection therewith, and as well as a form of Proxy, and he directed that said documents be filed with the records of this meeting as an exhibit to these minutes.

Upon motion duly made and seconded, it was unanimously

RESOLVED, that the form of Notice of Meeting and form of Proxy presented to this meeting, be, and the same hereby are, in all respects approved and adopted, with such change or changes therein as may be approved by the officers of this Corporation, with the advice and approval of the counsel, the execution thereof with such change or changes therein to be conclusive evidence of such approval; and further

RESOLVED, that an Annual Meeting of the Stockholders of the Corporation be, and it hereby is, called to be held at the office of the counsel for the Corporation, 45 Rockefeller Plaza, New York, New York, on Monday, October 2, 1967, at 10:00 o'clock A.M., in the forenoon, local time, for the following purposes:

(i) to elect a Board of Directors consisting of twelve (12) directors to hold office until the next Annual Meeting of Stockholders and until their respective successors have been duly elected and qualified; and

(ii) to transact such other business, if any, as may properly come before the meeting and any adjournment or adjournments thereof; and further

RESOLVED, that the close of business on September 15, 1967, be, and the same hereby is, fixed as the record date and time for the determination of the holders of Common Stock of the Corporation entitled to notice and to vote at said Annual Meeting of Stockholders, and all persons who are holders of Common Stock of the Corporation at such time and at such date shall be entitled to notice and to vote at such meeting; and further

RESOLVED, that Layman Hendrex and Charles Abramovitz, be, and they hereby are, appointed Judges of Stockholders' Votes to serve at said Annual Meeting of Stockholders or any adjournment or adjournments thereof; and further

RESOLVED, that the following named persons be, and they hereby are, designated as the management slate to be submitted to the stockholders for election at said Annual Meeting of Stockholders:

James C. Butt
Richard N. Funkhouser
Frederick M. Glass
Carleton E. Hammond
William Kelallis
Raymond J. Kerester
Charles J. Kushell, Jr.
Frederick W. Lowey
Joseph Meacham
Patricia R. Morel
Michael F. Sassi
Nathan M. Shippee

and further

RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed to do and perform all such acts and things and sign such documents and certificates and to take all such other action as they may deem necessary, proper or convenient in connection with the foregoing resolutions and the call and holding of said Annual Meeting of Stockholders.

There being no further business to come before the meeting, it was, on motion duly made and seconded, adjourned.

Patricia R. Morel

Secretary

IN THE SUPREME COURT OF NEW YORK
NEW YORK COUNTY

A 228

PRUDENTIAL OIL CORPORATION,
Plaintiff

v

PHILLIPS PETROLEUM COMPANY and
OSCAR L. CHAPMAN,
Defendants

COMPLAINT

Exhibit 3

1. Plaintiff is a corporation existing under the laws of Delaware having its principal office at 1 Rockefeller Plaza, City, County and State of New York.

2. Defendant Phillips Petroleum Company is a corporation existing under the laws of Delaware, licensed to do business in the State of New York, having its principal place of business within the State at 80 Broadway, City, County and State of New York.

3. The Hon. Oscar L. Chapman (U.S. Secretary of the Interior, 1950-1953) a defendant in this action, is a non-domiciliary of the State over whom this court has jurisdiction under §302(a) of the Civil Practice Law and Rules. He maintains an office for the practice of law at Pennsylvania Building, 425-13th Street, N.W., Washington, D.C., 20004.

Defts' Ex. 221 Id.
ABD
11/16/70

4. Beginning in 1961 the Economic Development Administration of the Commonwealth of Puerto Rico (EDA) consulted with one J.P. Coan of Omega Management, Inc., 230 Park Avenue, New York, N.Y. concerning a project designated "Petroquimica Puertorriqueña" which, as part of "Operation Bootstrap", would enhance the economic development of the Commonwealth by providing raw material for manufacturing industries based upon petrochemicals and thereby help alleviate the massive male unemployment problem of that island. The project envisioned the construction and operation in Puerto Rico of an additional petroleum refining facility which would transform unfinished petroleum oils into refined petroleum products, including a petrochemical feed stock which would be further upgraded in associated "satellite" plants in Puerto Rico into chemical commodities and ultimately into consumer products.

Exhibit 3

5. EDA, Coan, and all others concerned recognized from the outset that the economic feasibility of the project depended upon its operation with unfinished oils from Latin America as its raw material. Under Presidential Proclamation 3279 and Oil Import Regulation 1 of the U.S. Department of the Interior, such raw material could only be obtained for the proposed facility if an oil import quota were assigned to

it by the Oil Imports Administration of the Interior Department.

6. On December 14, 1961, one Mr. Sam Van Hyning, consultant to EDA, wrote to Mr. Coan advising him that he and one Mr. Rafael Durand, Administrator of EDA, had met with the Secretary of the Interior, the Hon. Stewart L. Udall, in Puerto Rico to discuss Puerto Rico's petrochemical matters and that Secretary Udall had expressed concrete interest in Puerto Rico's resource problems.

Exhibit 3

7. Omega Management, Inc. and Coan, during this period, made contact with Universal Oil Products Company (UOP) of Des Plaines, Illinois, to initiate an engineering and economic study of the Petroquimica Puertorriquena project. On September 12, 1961, UOP wrote to Mr. Coan to indicate that they were initiating their study. One of the factual assumptions set forth as being the basis for the study was that the raw material for the facility would be Venezualan crude oil.

8. At the request of Coan, one Mr. Bruce K. Brown, a director of Murphy Corporation of New Orleans, Louisianna, began to work with defendant the Hon. Mr. Chapman on the concept of a Puerto Rican refining venture operating on

imported crude. On January 29, 1961 Brown wrote to defendant the Hon. Mr. Chapman describing the financing of an existing Puerto Rican refining company, Commonwealth Oil and Refining Company. In February, 1962, Brown prepared several memoranda concerning the Puerto Rican refinery venture. One of these memoranda stated that a prerequisite for the success of the project would be the obtaining of an oil import quota for it. The other memorandum detailed a plan for payment to be made to various parties performing services in the promotion of the venture, including Omega Management, Inc., Brown himself and defendant the Hon. Mr. Chapman. According to this memorandum defendant the Hon. Mr. Chapman, as counsel, was to receive a retainer of $6,000 plus a base monthly retainer of $1,000 commencing on January 1, 1962. After operations commenced, defendant the Hon. Mr. Chapman was to be general counsel for the venture at an annual base retainer of $25,000. In addition, defendant the Hon. Mr. Chapman and Brown were to receive management stock options.

Exhibit 3

9. On February 23, 1962, Coan received a confidential letter from Van Hyning concerning the details of the next steps to be taken in the matter of site selection for the proposed facility. Substantial additional correspondence between Coan and EDA officials was conducted during this period concerning the said project.

10. On March 9, 1962 Dr. A.D. Fischbeck, Manager, Petrochemical Projects Development, International Department of defendant Phillips Petroleum Company wrote to Coan confirming that they were to meet during the week beginning March 11, 1962 to discuss the possibilities of defendant Phillips "supplying crude oil, participating in the refining and petrochemical complex, supplying management, providing technical assistance, participating in product sales and in any other category befitting [its] abilities".

Exhibit 3

11. On April 2, 1962 Fischbeck again wrote to Coan indicating that they had met on March 16, 1962 and had reviewed the data for the Puerto Rican project prepared by UOP and the proposed preliminary corporate structure plan for the venture. The letter conveyed Phillips' lack of interest in participating in the venture: "The advantages of participating in a refinery project as set forth in our meeting of March 16 are not readily apparent."

12. On May 18, 1962 Durand, Administrator of EDA, wrote to defendant the Hon. Mr. Chapman indicating that he had had extensive discussion and correspondence with Omega Management, Inc. concerning the proposed Puerto Rican refinery and indicating that Chapman would have Durand's, and therefore Puerto Rico's, full support in his efforts to obtain an oil import quota for the project.

13. Prior to September 1962, despite a considerable effort expended in its behalf by Coan, defendant the Hon. Mr. Chapman, and Brown, little progress toward successful launching of the Puerto Rican refining project was being made. In a letter to one Mr. James J. Wilson of San Juan, Puerto Rico, dated July 3, 1962, Coan indicated that the following problems remained to be solved before the project could be formally presented to the Department of the Interior for the assignment of an oil import quota:

Exhibit 3

1. a chemical manufacturer who would buy the petrochemical raw materials and utilize them in Puerto Rico would have to be found;
2. oil companies to provide the necessary raw materials and buy the non-petrochemical refined products therefrom would have to be found;
3. a financing plan for the venture would have to be perfected;
4. a complete and reliable management group would have to be assembled.

14. In September 1962 one Mr. Walter Gruber of E.M. Warburg and Company, 60 Broad Street, New York, N.Y., arranged for Coan to meet one Mr. Nathan M. Shippee, Chairman of the Board of plaintiff Prudential Oil Corporation for the purpose of enlisting plaintiff's efforts on behalf of the said Puerto Rican refinery project.

BEST COPY AVAILABLE

15. In a letter dated October 23, 1962 addressed to Gruber, Shippee indicated that inasmuch as he, one Mr. Edward J. Willey, who then was President of plaintiff, one Mr. William H. Wright and the Hon. Robert B. Anderson (Secretary of the Navy 1953-1954, Secretary of the Treasury 1957-1961) were the directors and sole shareholders in Heritage Corporation, a Connecticut Corporation, plaintiff would be in a position through his association with the Hon. Mr. Anderson to make contact with major petroleum and chemical companies to provide the raw materials and markets for the proposed venture, items which were prerequisite to its successful launching.

Exhibit 3

16. As a result of several additional meetings and discussions, the proposed Puerto Rican refinery venture and Coan's entire file of correspondence and reports pertaining thereto were turned over to plaintiff for organization and execution on behalf of the venturers.

17. Plaintiff then began intensive efforts to provide the necessary element for the project. On October 25, 1962, one Thomas Young, a consultant to plaintiff, contacted the R.M. Parsons Company, 26 Broadway, New York, N.Y., to arrange the services of this company as engineers for the project. On October 31, 1962 negotiations were initiated with a major

BEST COPY AVAILABLE

chemical company with a view to obtaining their participation in the venture as the operator of a satellite chemical company.

18. By a letter dated November 9, 1962 addressed to the Hon. Mr. Anderson, Shippee explained that of the four elements of the project to be completed before application for an oil import quota could be filed by defendant Chapman, who would serve as general counsel to the venture, one element in particular lay in the special province of the Hon. Mr. Anderson. This was to initiate contact with one or more major oil companies for "back-to-back contracts" for the venture, i.e. contracts to sell crude to the venture and buy back the same amount of refined products less any petrochemical products sold to chemical companies. On November 9, 1962 Shippee and Willey came to the Hon. Mr. Anderson's office in New York City to obtain his recommendation concerning a major oil company to fill this role. The Hon. Mr. Anderson recommended defendant Phillips Petroleum Company and immediately telephoned one Mr. K.S. Adams, Chairman of the Board of defendant Phillips, who indicated that defendant's written assent to joining in the venture would be sent to plaintiff forthwith.

Exhibit 3

19. Thereupon, defendant Phillips dispatched the following letter dated November 13, 1962 and addressed to plaintiff:

Gentlemen:

In connection with Puerto Rico Oil and Petrochemical Company's complex to be built in Puerto Rico, Phillips Petroleum Company is prepared to:

1. furnish 30,000 to 60,000 barrels per day of crude oil for charge stock;
2. purchase the refined petroleum products not consumed in the petrochemical operation;
3. counsel with you and assist, if you wish, in the design and construction and operation of the proposed facilities.

Exhibit 3

Whenever you desire, we shall be glad to have our representative work with you to negotiate and complete contract.

Very truly yours,
/s/ Stanley Learned, President

20. In the furtherance of the proposed venture, the creation of a Puerto Rico Corporation by the name of Puerto Rico Oil and Petrochemical Company (PROPCO), with defendant Chapman as a director and general counsel and with Fischbeck as vice-president for operations, was then planned. On December 13, 1962, Mr. Peter L. Shea of Kuhn, Loeb and Company, Inc., 30 Wall Street, New York, submitted to plaintiff a financing plan for PROPCO.

21. Having obtained the commitments of defendant Phillips and defendant the Hon. Mr. Chapman to the said venture, plaintiff now undertook an intensive effort to obtain all of the necessary elements for the launching of the project. At the

end of November, 1962, Shippee and Young of plaintiff and Coan went to Puerto Rico to inspect available plant sites and to meet with Durand and with one Mr. Hernandez, the executive director of EDA. As a result of those meetings, an understanding was reached between plaintiff and the representatives of the Commonwealth of Puerto Rico to the effect that, provided that the Commonwealth obtained technical endorsement for the proposed project in an independent study, the Commonwealth would sponsor the project, would grant it exclusivity for its chemical industry, would grant it tax and other protection, would lease to it a site for its plant, and supply area development including all facilities except those used exclusively by the project. On December 27, 1962 Hernandez again met with Shippee in New York to review the project and to select the Arthur D. Little Company as the Commonwealth's independent consultant.

Exhibit 3

22. During this time plaintiff also continued its efforts by making contact with chemical manufacturers for the purpose of finding operators of potential petrochemical "satellite plants" to create a market for the petrochemical products of the refinery, by maintaining contact with officials of EDA concerning details of the Commonwealth's cooperation with the project, and by maintaining contact with defendant the Hon. Mr. Chapman concerning his efforts in obtaining an oil import quota for the project.

In regard to the last matter, on January 11, 1963 Shippee wrote to defendant the Hon. Mr. Chapman reporting on progress on the project and indicating that plaintiff was in the process of preparing an extensive detailed written project proposal to be used in making the application for the oil import quota.

23. On January 21, 1963 Coan communicated to Shippee the arrangement of a meeting to be held between defendant the Hon. Mr. Chapman and Durand and Hernandez of EDA regarding the project.

Exhibit 3

24. In a letter dated March 8, 1963 Shippee informed the Hon. Mr. Anderson that, in response to defendant the Hon. Mr. Chapman's questions as to how the equities in the project were to be distributed, he had told defendant the Hon. Mr. Chapman that this problem would be placed into the Hon. Mr. Anderson's hands.

25. On March 29, 1963 Shippee wrote to defendant the Hon. Mr. Chapman that Fischbeck of defendant Phillips had requested that plaintiff's project outline be left with defendant Phillips so that the latter may bring it up to date with current prices and for a final engineering and marketing review before placing it in defendant the Hon. Mr. Chapman's hands in early May for the latter's use in making the application for the oil import quota. Defendant the Hon. Mr. Chapman communicated his pleasure with the progress of this project to Shippee on April 11, 1963.

26. On April 29, 1963 Fischbeck wrote to Shippee stressing that defendant Phillips' interest in the project was dependent upon the establishment of an oil import quota.

27. On May 29, 1963 plaintiff forwarded three copies of its said extensive project outline "Request for Oil Import Allocation - Puerto Rico Oil and Petrochemical Company - San Juan, P.R. and New York, N.Y." to defendant the Hon. Mr. Chapman.

Exhibit 3

28. On July 2, 1963 defendant the Hon. Mr. Chapman, Coan, and Messrs. Young, Little and Shippee of plaintiff came to the Hon. Mr. Anderson's office to discuss the future strategy for the launching of the said project. After a private conference held between the Hon. Mr. Anderson and defendant the Hon. Mr. Chapman during the course of this meeting, the Hon. Mr. Anderson announced to the meeting that defendant the Hon. Mr. Chapman had agreed to undertake to "quarterback the project in Washington".

29. From this point until early 1964, during a number of conferences between representatives of the venture, Interior Department and EDA officials, it became apparent that the outlook for the granting of an oil import quota for the venture could be enhanced if the application were made in the name of a major integrated petroleum company, in whose reputation the strongest grounds could be found for confidence in the successful execution of the project.

30. On May 1, 1964, therefore, the application for the oil import quota was formally made in the name of Phillips Petroleum Company, with defendant the Hon. Mr. Chapman serving as counsel to the applicant Phillips.

31. Public hearings were held on July 31, 1964 at the Interior Department Auditorium in Washington, D.C. on this application. Exhibit 3 Speaking in favor of the application, Durand stated that the proposal "...is the result of three years of effort and negotiation in which our government sought to interest elements of the petroleum and chemical industries in Puerto Rico the core of a petrochemical effort." The only other party appearing at the hearing to speak for the application was defendant Phillips. Representatives of many other oil companies, including those already in operation in Puerto Rico, spoke in opposition to the application. Plaintiff did not speak at the hearing.

32. After the hearing, during the period provided by the Interior Department for the submission of additional statements and during the subsequent period when the Interior Department conducted a field investigation on the application, plaintiffs made no representations to the Interior Department or anyone else which could in any way be detrimental to this application, or to further the cause of any other application for an oil import quota for a Puerto Rican refinery.

33. On January 13, 1965 Shippee and Willey of plaintiff met with Learned and Adams of defendant in the offices of the latter to discuss the progress of the venture. Upon Phillips' request that plaintiff make an effort to furnish a market for at least a portion of the anticipated petrochemical production, plaintiff advised defendant Phillips that it had a customer for 50,000,000 pounds per year of polyvinylchloride.

Exhibit 3

34. During the remainder of 1965, while the Interior Department was weighing the said application for the quota, personnel of plaintiff and of defendant Phillips continued to work together on various aspects of the project.

35. An oil import quota for 50,000 barrels per day of low boiling distillates for importation into Puerto Rico was granted to defendant Phillips effective January 1, 1966, pursuant to an agreement dated May 27, 1965 between defendant Phillips and the Commonwealth of Puerto Rico. Under this agreement a corporation named CORE would be formed which would own and operate the facility that would process the oil to be imported under the said quota. CORE, under the said contract, is to be owned seventy five percent (75%) by defendant Phillips and twenty five percent (25%) by the Puerto Rico Industrial Development Corporation (PRIDCO).

36. At the said Interior Department public hearing, Learned stated that each barrel of the low boiling stock which, under defendants' plan and under the subsequently granted quota, is to be imported is the equivalent in low boiling ingredients of three to four barrels of crude petroleum. Imported low boiling petroleum, because its price is lower than domestic low boiling petroleum, represents an economic advantage as compared to domestic crude of up to two dollars ($2.00) per barrel to one who can market gasoline in the United States. Thus over a fifty (50) year period, a reasonable expectancy for the life of the venture, the value of this import quota is one billion eight hundred and twenty-five million dollars ($1,825,000,000.00).

Exhibit 3

37. Since the award of the said import quota defendant Phillips has refused to acknowledge plaintiff's participating interest in the said venture.

38. Defendant Phillips has remunerated Coan and defendant the Hon. Mr. Chapman for their respective roles in the said venture.

39. Plaintiff took the salient role in the effort to establish the said venture; i.e., the Puerto Rican refinery facility, after defendant Phillips had indicated its lack of interest therein. As a result of plaintiff's having later

convinced defendant Phillips of the feasibility of the plan to obtain an oil import quota for the venture with the aid of the services of its counsel, defendant the Hon. Mr. Chapman, defendant Phillips then gave its commitment to plaintiff that it would assist in the design, construction and operation of the facility on behalf of the venture. Plaintiff performed innumerable services without which the project to which the import quota was assigned would not have come to fruition, including the furnishing to defendant the Hon. Mr. Chapman, counsel for the venture, of the extensive project proposal. Plaintiff also refrained from advocating to the Interior Department any course alternative to the granting of an import quota on defendant Phillips' application. Plaintiff has consistently performed as though it were, and defendant Phillips has consistently led plaintiff to believe that it is, a joint participant with defendant Phillips in a joint venture which is to perform the role for which defendant Phillips is designated under the said contract of May 27, 1965.

Exhibit 3

WHEREFORE plantiff prays that this honorable court grant to plaintiff:

(a) a decree that defendant Phillips holds its shares in CORE (seventy five percent of the total shares therein) in constructive trust for the benefit of the said joint venture.

(b) an accounting between the joint venturers.

Exhibit 3

(c) by way of compensatory damages for the second cause of action, a judgment in the amount of nine hundred and twelve million five hundred thousand dollars ($912,500,000.00) against defendant Phillips.

(d) a judgment for plantiff's costs, disbursements and a reasonable attorney's fee.

(e) such other relief as this court may deem just and proper.

Affidavit of Nathan M. Shippee, in Opposition to Motion to Dismiss,

Sworn to April 30,1975 and Exhibits Thereto

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRUDENTIAL OIL CORPORATION,

Plaintiff,

-against-

PHILLIPS PETROLEUM COMPANY,

Defendant.

---

67 Civ. 3748

AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

NATHAN M. SHIPPEE, being sworn, deposes and says:

1. I am Chairman of Prudential Oil Corporation of New York ("Prudential"), the plaintiff herein. I make this affidavit in opposition to the belated motion by defendant Phillips Petroleum Company ("Phillips") to dismiss this action for lack of federal jurisdiction.

THE BACKGROUND OF THIS MOTION

2. This action was commenced on September 27, 1967. In the complaint, a copy of which is annexed hereto as Exhibit A, the basis of federal jurisdiction was clearly stated to be diversity of citizenship. See ¶¶ 1-3 of the complaint. In its answer, filed on October 19, 1967, and annexed hereto as Exhibit B, Phillips, in its "Second Defense" asserted that the diversity of citizenship of the parties was collusive. From that day to the service of this motion on April 3, 1975, Phillips has never brought this issue on to be determined by

the Court.

3. This procedure is consistent with Phillips' continuing effort over the past two years, to delay any trial of this action by taking its discovery and making its motions in a piecemeal fashion. Plaintiff commenced depositions in this action in February 1972, after Phillips appeared to have concluded its discovery, having propounded two sets of interrogatories, having inspected plaintiff's documents and having taken over a thousand pages of depositions. Thereafter, Prudential took 10 depositions in New York and at Phillips' headquarters in Bartlesville, Oklahoma. In late 1972, however, Phillips stated that it wanted to take further depositions. As a result, Phillips took depositions of Bruce Brown in New Orleans, Louisiana on December 13, 1972; of W.J. Norton in New York on March 29, 1973; of Sam J. Van Hyning in San Juan, Puerto Rico on May 7, 8 and 9, 1973; of E.W. Schnabel, E.J. Swain and F.W. Dusek in Des Plaines, Illinois on July 6, 1973; of J. Diaz-Hernandez in New York on September 10, 1973 and of Rafael Durand in San Juan, Puerto Rico on September 28, 1973.

4. At a pre-trial conference before Chief Judge Edelstein on July 2, 1973, Phillips announced that it was planning to move to strike plaintiff's jury demand. Nothing was said about moving to dismiss the action for lack of jurisdiction. In accordance with the directions of the Court, Phillips served its motion to strike the jury demand on October 5, 1973. This motion was argued on December 3, 1973 and denied by Chief Judge Edelstein in a decision filed April 5, 1975, a copy of which is annexed hereto as Exhibit C.

BEST COPY AVAILABLE

5. At a pre-trial conference before Chief Judge Edelstein on January 17, 1974, when the deadline for completion of discovery had passed nearly four months before and the Court announced that it would like to go to trial in the first week of February of that year, Phillips then stated that it wanted to take the deposition of a witness, Eric Javits, of whom it had known since the commencement of the suit. Although the Court pointed out that Phillips had had ample opportunity to take this deposition, it granted leave to do so, provided it was done within a week.

6. At the next pre-trial conference on January 24, 1974, Phillips told the Court that more time would be needed to complete the proposed pre-trial order. It then became apparent to the Court that the case could not be tried in February, 1974. The stipulation of facts and the issues to be tried were agreed upon between the parties in July, 1974, except for the issues held in suspense until the decision of the motion to strike the jury trial. Thereafter, on October 31, 1974, Prudential sent Phillips its list of witnesses, documents, depositions and interrogatories for inclusion in the pre-trial order. Phillips did not respond to this until another pre-trial conference was called by Judge Edelstein, at Prudential's request, on January 22, 1975. Immediately on receiving notice of this pre-trial conference, Phillips propounded interrogatories concerning the testimony of Prudential's expert witnesses, whose names Phillips had had for some three months.

7. The instant motion follows Phillips' consistent

pattern of doing nothing until it fears that the action is proceeding toward trial and then engaging in a dilatory tactic to achieve delay. Phillips has had the facts upon which it here relies to defeat jurisdiction for at least four years. Now, however, recognizing that under the program adopted by the Court this action must be tried almost immediately, it has made this motion to forestall a trial.

THE HISTORY OF PRUDENTIAL CONNECTICUT

8. The transfer of the claim asserted in this action was not collusive and was not done for the purpose of creating federal jurisdiction. The transfer was made solely for legitimate business reasons.

9. The claim - and all other interests in Phillips' Puerto Rican petrochemical facility - originally belonged to Prudential Oil Corporation, a corporation founded on October 29, 1959, under the laws of Connecticut (hereinafter referred to as "Prudential Connecticut"). This corporation, which, had it continued in existence, could itself have maintained this action in federal court, was formed by Edward J. Willey and me for the purpose of offering for sale participations in administered oil and gas drilling exploration and development programs. The corporation was formed in Connecticut and had its principal place of business in Greenwich because that was where Willey and I lived. The letter from Phillips to Prudential Connecticut, annexed as Exhibit A to the complaint, was sent to that corporation's Connecticut office.

10. On October 1, 1962, Prudential Connecticut moved

its principal place of business to New York, New York although for a time it continued to maintain its Connecticut office. From that time, New York was the principal place of business of Prudential Connecticut and has been the principal place of business of all of its successors and remains so today.

11. In early 1965, after the business of the corporation had expanded substantially, counsel to the corporation recommended that Prudential Connecticut be reorganized as a Delaware corporation. My recollection of the reason for reorganization as a Delaware rather than a New York corporation was that there was a large number of shares of stock outstanding (although held by relatively few shareholders) and the Delaware transfer taxes were lower than the New York transfer taxes and because Delaware did not then provide for liability on the part of stockholders of unlisted corporations to pay wages of employees, whereas the New York law so provided.

12. As a result, Prudential Oil Corporation was formed as a Delaware corporation on March 1, 1965 (hereinafter "Prudential Delaware"). A copy of the certificate of incorporation is annexed hereto as Exhibit D. The assets and liabilities of Prudential Connecticut were then transferred to Prudential Delaware as of June 30, 1965. A copy of the minutes of a stockholders' meeting of Prudential Connecticut held on May 26, 1965, which authorized the transfer is annexed hereto as Exhibit E. A copy of the minutes of a meeting of the board of directors of Prudential Delaware held the same day, which authorized the acquisition of the assets and liabilities of Prudential Connecticut, is annexed hereto as Exhibit F. Prudential Connecticut was dissolved as of June 30, 1965, and the certificate

of dissolution, a copy of which is annexed hereto as Exhibit G, was filed on November 12, 1965.

THE HISTORY OF
PRUDENTIAL DELAWARE

13. Immediately upon the formation of Prudential Delaware, consideration was given to the diversification of its business through subsidiaries and its conversion to a holding company. This is evidenced by the minutes of the meeting of the board of directors of Prudential Delaware held on September 8, 1965, a copy of which is annexed hereto as Exhibit H. These minutes state:

> "The Chairman presented to the Meeting the analysis of Unit Sales in the 1965 Annual Drilling Fund, previously sent to all of the directors. The Chairman also reviewed with the directors the cash needs of the Corporation in respect of financing certain of the Units in said Drilling Fund. He then noted that plans were under way to diversify the operations of the Corporation through the organization of subsidiaries, leaving the Corporation with primarily a holding company role . . . .
> The Chairman then discussed with the directors the status of the Phillips Chemical Project in Puerto Rico and the present position of the Corporation with respect thereto.
> The Chairman stated that the next order of business, consistent with the objective of diversification previously discussed, was to organize a subsidiary to be know as Prudential Finance Corporation and whose primary function would be to finance, on a selected basis, the purchase of Units in the Prudential Drilling Funds. There then followed a discussion by the directors."

14. In fact, Prudential Delaware already utilized subsidiaries for specific purposes. One such subsidiary was the

Connecticut Exploration Corporation, a Connecticut corporation, formed on October 21, 1963, as an affiliate of Prudential Connecticut and transferred to Prudential Delaware on June 30, 1965. Connecticut Exploration Corporation was formed to hold title to real property interests in connection with the oil and gas ventures which Prudential Connecticut (and thereafter Prudential Delaware) promoted.

15. Similarly, a summary of the minutes of a meeting of the board of directors of October 19, 1965, a copy of which is annexed hereto as Exhibit I, refers to the directors' consideration of the organization of subsidiaries to perform specified functions in specified areas. The summary states in pertinent part:

> "Mr. Shippee then turned the Board's attention to discussion of long range policy, particularly in relationship to perimeter companies. He explained that a number of possibilities had been brought to his attention and gave a number of examples of how these were investigated before being brought to the serious attention of the Board and the Executive Committee. There was a short discussion relating to the present status of the proposed Prudential Financing Subsidiary. Mr. Shippee and Mr. Kushell had further areas to explore before making a report."

16. At the meeting of the board of directors of Prudential Delaware on April 27, 1966, the directors reviewed plans for other diverse interests of the corporation. Plans for construction of a shopping center-office building complex in Madrid were discussed and the incorporation of a wholly owned subsidiary America House, Inc., in Spain for this purpose was approved. In addition, the board approved the prior formation of another subsidiary of Prudential Delaware called Prudential Polymer Co., organized

under the laws of Puerto Rico, for the purpose of engaging in activities in connection with the Phillips petrochemical plant complex being constructed in Puerto Rico. Finally, the directors considered changing the name of the corporation in order to "better describe the functions of the corporation as originally planned." It was pointed out that Prudential Oil Corporation was not appropriately descriptive. A copy of the minutes of that meeting are annexed hereto as Exhibit J.

PLANS FOR A PUBLIC STOCK OFFERING AND A TOTAL RE-ORGANIZATION OF PRUDENTIAL DELAWARE.

17. During this period, the business of Prudential Delaware continued to expand. Prudential Delaware both invested as a participant in oil and gas drilling programs and, through Prudential Finance Corporation, lent money to outside participants to assist them in carrying their interests. Additional financing was needed both for the purpose of investing as a participant in additional oil and gas drilling funds and to lend money to outside participants in the funds. The best apparent source of this financing was from a public issue of stock.

18. The concept that was developed to facilitate such an offering was to restructure Prudential Delaware completely and to put all of its various interests into separate subsidiaries, leaving Prudential Delaware as a holding company owning nothing but the stock of its subsidiaries. It was to be a passive corporation neither operating nor engaging in any business on its own account. One subsidiary, that which would have the

interests in the drilling funds would make the public offering. In order to simplify its legal and accounting problems, as well as to attract public purchasers of its stock, that subsidiary would be kept free of any other ventures or contingent assets, such as the Puerto Rico petrochemical complex, the Madrid building project and other as yet unrealized ventures.

19. In June, 1966, I drafted a memorandum entitled "Considerations for Public Issue", a copy of which is annexed hereto as Exhibit K. In that memorandum, I reviewed the various interests of Prudential Delaware, its prospects, the need for diversification and the possible timing of a public offering to capitalize on the success of the drilling funds and the then projected future growth potential. I also outlined a crude organization of Prudential Delaware as it would appear after reorganization as a parent holding company prior to a public offering by Prudential Drilling Funds, Inc., which had been created as a wholly owned subsidiary of Prudential Delaware on December 21, 1965. A copy of the certificate of incorporation of Prudential Drilling Funds, Inc., is annexed hereto as Exhibit L.

20. In my June, 1966 memorandum, I indicated that the name of Prudential Delaware would be changed to Prudential Equities to reflect its nature as a holding company. I also indicated that the name of Prudential Drillings Funds, Inc. would be changed to Prudential Funds, Inc. and that it would be that corporation which would hold the drilling funds and make the public stock offering. Other more or less contingent interests of Prudential Delaware were to be placed in single-function separate subsidiaries, such as Prudential Polymer Co.,

a Puerto Rican corporation and America House, Inc., a Spanish corporation. Another reason for the use of these separate subsidiaries was that interests in the specific projects might be offered to outside participants.

21. The plan outlined in my memorandum of June, 1966, was further refined after discussions among the directors. On June 29, 1966, at a meeting of the directors of Prudential Delaware, the complete reorganization was formally set in motion. First, Prudential Delaware transferred all of its assets relating to its business in the management of oil and gas drilling funds to Prudential Drilling Funds, Inc., in exchange for the stock of Prudential Drilling Funds, Inc., whose name was to be changed to Prudential Funds, Inc. Second, the name of Prudential Delaware was changed to Prudential Equities Corp. to better reflect its status as a parent holding company.

22. Third, the interest of Prudential Delaware (now Prudential Equities and hereinafter sometimes referred to as such), in the venture with Phillips in Puerto Rico and all of the rights, obligations and claims arising therefrom were transferred to Prudential Oil Corporation, a new subsidiary to be created under the laws of New York and hereinafter referred to as "Prudential New York". The name Prudential Oil Corporation, which had been continuously used since 1959, was regarded by the directors as a valuable asset that should be preserved in a subsidiary. The corporation was to be formed in New York because the principal place of business of all of the Prudential corporations was in New York, at 1 Rockefeller Plaza, and there did not appear to be any special reason why a foreign corporation was needed.

23. Fourth, the directors voted to create another separate subsidiary corporation of Prudential Equities with the sole function of acting as nominee to hold title to the lease-hold of other interests of the Prudential drilling funds. This was to facilitate the filing and transfer of real property interests of the drilling funds. Again, because there appeared to be no need to form a foreign corporation for this purpose, the corporation, which was to be known as Prudential Land Company, Inc., was to be a New York corporation.

24. Finally, provision was made for a stockholders' meeting to accomplish the name change from Prudential Delaware to Prudential Equities and the transfer of the assets of the drilling funds to Prudential Drilling Funds, Inc. The directors also voted to expand the board of Prudential Equities to make place for two outside directors, Newton Minow and J. Ira Harris. A copy of the minutes of the meeting of June 29, 1966, are annexed hereto as Exhibit M.

25. On July 13, 1966, at a stockholders' meeting of Prudential Equities, the stockholders approved the change of name and the transfer of assets to Prudential Funds, Inc. For that meeting, I prepared a chart, a copy of which is annexed hereto as Exhibit N, to demonstrate graphically the extent of the reorganization which was being undertaken. It can be seen from that chart that Prudential Equities was left as a bare holding company. Prudential Funds, Inc., which was to be the vehicle for the public offering, held only the interests in the drilling funds and the financing corporation for such interests. The remaining interests of Prudential Equities were all placed in separate corporations, as follows: Prudential

Land Corp., a New York corporation; Prudential Oil Corporation, a New York corporation; America House, a Spanish corporation; and Prudential Polymer, a Puerto Rican corporation. None of these latter corporations were Delaware corporations.

26. It is thus apparent merely from reviewing the foregoing history, as established by contemporaneous documents, that there was no collusive purpose whatever in creating Prudential New York as part of this reorganization.

27. In accordance with the plan adopted by the directors and shareholders, the certificate of change of name of Prudential Delaware to Prudential Equities Corp. was filed on July 15, 1966 (Exhibit O); Prudential New York was incorporated on July 12, 1966 (Exhibit P); and Prudential Land Company, Inc. was incorporated on July 12, 1966 (Exhibit Q). Further, on August 5, 1966, the name of Prudential Drilling Funds, Inc. was changed to Prudential Funds, Inc. (Exhibit R).

28. The reorganization contemplating the public offering continued thereafter. On December 21, 1966, Prudential Equities acquired from Prudential Funds all of the stock of Prudential Finance Corporation, another subsidiary. The purpose of this transfer was to simplify as much as possible the corporate structure of Prudential Funds for the proposed public offering of its stock. Subsequently, however, Prudential Finance had to be returned to Prudential Funds for special tax reasons not here relevant.

29. More than a year passed before the growth and

earnings of Prudential Funds were sufficient to satisfy the underwriter of the public offering as to the probable success of the offering. After lengthy negotiations, the first public offering of the stock of Prudential Funds was made in 1968. The first form S-1 registration statement was submitted to the Securities and Exchange Commission on October 16, 1968 (Exhibit S), and the prospectus was effective on December 13, 1968 (Exhibit T). It should be noted that no reference is made in that prospectus to the Phillips Puerto Rican venture or to the litigation with Phillips, which had commenced in September, 1967. This was because the reorganization outlined above achieved its purpose of stripping Prudential Funds to its essentials, thus simplifying the prospectus to be issued in connection with the public offering.

THE LITIGATION
WITH PHILLIPS

30. The transfer which Phillips attacks was an integral part of the foregoing reorganization and was done for completely proper and appropriate business reasons. Phillips totally ignores the complete restructuring of Prudential Equities and its purpose and simply treats the transfer to Prudential New York as though it were a single, separate, unrelated transaction done solely for the purpose of creating federal jurisdiction. As the above history establishes, this is untrue and, in fact, totally baseless.

31. Phillips makes much of a draft complaint shown to it in May, 1966, in which Prudential Delaware was the plaintiff in a proposed action against Phillips and Oscar

Chapman in New York State Supreme Court. At the time of this draft, however, the above reorganization had not yet begun. Thus, the complaint merely reflected the situation at the time it was drawn.

32. The transfer to Prudential New York of Prudential Delaware's rights in the Puerto Rican venture occurred in July, 1966 as part of the overall reorganization. It is noteworthy that this action was not commenced until September, 1967, fourteen months later. If the transfer were made for the purpose of creating federal jurisdiction, it seems apparent that the transfer and the commencement of the action would have been nearly simultaneous.

33. Finally, this is not a case in which a state of incorporation was chosen which had no contact with the business of the incorporator. Continuously, since the principal office of Prudential Connecticut was moved to New York in 1962, New York has been the location of the principal offices of all Prudential corporations. The management and counsel of all of these corporations are located in New York. In effect, Phillips is arguing that once it had been decided by the directors of Prudential Delaware to transfer the Puerto Rico petrochemical venture to a new subsidiary as part of its reorganization, that subsidiary could not be formed even in the state where it had its principal office without requiring a finding of collusion to create federal jurisdiction.

34. Moreover, since the commencement of this action, the Prudential corporations have continued to incorporate other subsidiaries and affiliates in New York, including Teldata

Systems Corporation, incorporated on August 10, 1973, and Pilgrim Telecommunications Corp., incorporated on August 21, 1973. These were incorporated in New York for no reason other than convenience and because no legal or practical reason appeared to require incorporation in another state.

35. In view of the foregoing, it is clear that the transfer of the interests of Prudential Delaware in the Phillips Puerto Rican venture to Prudential New York was not collusive and was not done to create diversity. Phillips has not cited and cannot cite a single document, corporate minute or line of testimony in the thousands of pages of depositions in this case to support its charge that this transfer was collusive. Phillips' motion should be denied.

NATHAN M. SHIPPEE

Sworn to before me this
day of April, 1975

MERYL SAEWITZ
Notary Public, State of New York
No. 41-4602242
Qualified in Queens County
Commission Expires March 30, 19 76

Exhibits Annexed To Affidavit of Nathan M. Shippe

A

A 260

Filed 4/27/67

United States District Court

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PRUDENTIAL OIL CORPORATION,
Plaintiff,

v.

PHILLIPS PETROLEUM COMPANY,
Defendant.

67 Civ 3745

Civil Action
File No.....

COMPLAINT.

PALMER, SERLES, DELANEY & SHAW
Attorneys for Plaintiff
62 William Street,
New York, New York 10005.
(212) WH 3-3111

ROBERT F. CONRAD,
815 Connecticut Avenue, N. W.
Washington, D. C. 20006
Of Counsel
(202) 298-5535

United States District Court

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PRUDENTIAL OIL CORPORATION,
Plaintiff,

v.

PHILLIPS PETROLEUM COMPANY,
Defendant.

Civil Action
File No._____

COMPLAINT.

Plaintiff, by its Attorneys, for its Complaint herein, alleges:

Jurisdiction.

1. Plaintiff, Prudential Oil Corporation, is a New York corporation, having its principal place of business at 1 Rockefeller Plaza, New York, New York. Plaintiff brings this action as assignee of all the right, title and interest to the claims asserted herein of Prudential Equities Corp., a Delaware corporation, which in turn was the successor in interest and assignee of the entire business, assets and properties of Prudential Oil Corporation, a Connecticut corporation. Unless otherwise stated, reference herein to "Prudential" shall be to the Connecticut corporation.

2. Defendant, Phillips Petroleum Company, is a Delaware corporation, having its principal place of business in Bartlesville, Oklahoma. It is sometimes hereinafter referred to as "Phillips".

3. The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.

For a First Claim for Relief.

4. In 1961, Rafael Durand, the Administrator of the Economic Development Administration ("E. D. A."), an agency of the government of the Commonwealth of Puerto Rico, requested Omega Management, Inc. ("Omega"), a management consulting service organization located at 230 Park Avenue, New York, New York, and its President, Mr. J. P. Coan ("Coan"), to undertake the preparation of an initial study with respect to the feasibility of establishing certain new refining and petrochemical manufacturing facilities in Puerto Rico.

5. This project was conceived as part of "Operation Bootstrap", and was the start of a program announced by E. D. A. to encourage the expansion of the petrochemical industry within the Commonwealth. Such program was proposed as a means to compensate for the lack of indigenous raw materials in Puerto Rico to support industrial growth, and to take advantage of the favorable geographic location of Puerto Rico in relation to the large oil resources of the Caribbean area, particularly Venezuela. The products of the petrochemical industry were looked upon as intermediate chemicals which ultimately would be used to produce a large variety of consumer products to be made from nylon, plastics, synthetic fibers, fertilizers, paints, synthetic rubber, and other petrochemical derivatives. In this manner, the new project would form the basis of new diverse industries and result in large scale employment needed in the Commonwealth.

6. At the time when the project was first conceived, there were already two refineries operating within the Commonwealth designed to produce normal refinery products, such as gasoline, kerosene, fuel oil, butane, and diesel oil, and which already were capable of meeting the Commonwealth's entire requirements for such products. Some steps had been taken to increase the production at these facilities and to convert part of their product to petrochemical raw materials which would be utilized as feed stock for petrochemical plants. It was hoped that the

success being achieved through these initial steps could be increased and accelerated by the creation of refinery and petrochemical facilities designed for the specific purpose of furnishing a base to support industrial operations.

7. In or about December, 1961, Omega submitted to E.D.A. a favorable preliminary feasibility study which showed that the proposed project, as Omega conceived it, was economically sound and would result in substantial and continuing benefits to the economy of Puerto Rico. After discussions with various representatives of E.D.A., the preliminary feasibility study was accepted by that agency and its support was committed to the proposed project.

8. It was immediately recognized, however, that the establishment of new refinery and petrochemical facilities might conflict with the express terms of the United States Oil Import Control Program established under Presidential Proclamation 3279 and the Oil Import Regulations of the United States Department of the Interior issued thereunder. Under this program no crude oil, unfinished oils, or finished refinery products produced outside the territorial limits of the United States could be imported except under a quota granted pursuant to an allocation made by the Oil Import Administration of the Department of the Interior. Accordingly, after consultation with and at the suggestion of Omega, representatives of the E.D.A. consulted with the Honorable Stewart L. Udall, Secretary of the Interior, and came away with the understanding that the Secretary was impressed with the contribution that the new facilities would make to the achievement of economic stability in Puerto Rico. These representatives reported to Omega that Secretary Udall would give careful consideration to an application for the allocation of an import quota to the new facilities when a specific project was presented. On this basis, it was determined to proceed with the project.

9. The initial responsibility for formulating the details of the project and arranging for its promotion was assumed by an initial venture group which included Mr. Bruce K.

Brown ("Brown"), who, as the retired President of Pan-American Southern Corporation and Vice President of Standard Oil Company (Indiana), was a business consultant to the petroleum and petrochemical fields, and the Honorable Oscar L. Chapman ("Chapman"), former United States Secretary of the Interior, and a practicing attorney in Washington, D. C.; and it was agreed that Omega would continue to provide management consulting service to the venture. The purpose of the venture was to promote the project and, through an operating corporation to be formed in Puerto Rico, *inter alia*, to arrange for the engineering design and construction of the refinery portion of the project, to arrange for corporations to erect the petrochemical facilities, to secure the necessary oil import quotas, rights, licenses and properties to engage in business and to provide for the necessary financing.

10. Brown, who was also a director of the Murphy Corporation, a large oil company that owned substantial crude oil reserves and naphtha stores in Venezuela, was able, without difficulty, to cause that corporation to become associated with the venture.

11. From the inception, Brown stated that the principal problem which had to be overcome in order for the venture to succeed was to secure the participation of a major chemical company or companies which would establish new petrochemical plants in Puerto Rico and become the purchasers of the petrochemical raw materials produced by the refinery. He stated that the application to the Oil Import Administration for an oil import quota would have to set forth not only the engineering and financing plans for the complete project, but would have to contain firm commitments from such chemical company purchasers to evidence the reality of the proposed petrochemical enterprise. On this basis he concluded that the expenditure of funds for the refinery portion of the project should be deferred until the participation of the petrochemical purchasers could be arranged. Accordingly, the promotion of the venture was carried forward along the dual lines

of (1) efforts to obtain chemical company participation; and (2) efforts to arrange for financial backing.

12. Among the companies that the venture group approached as possible participants in the venture to undertake firm commitments with respect to utilization of the petrochemical raw materials were Mobil Latin America, Inc., Monsanto Chemical Company, Hercules Powder Company as well as defendant Phillips. Although, on two separate occasions, Phillips reviewed and studied the proposal with a view towards participating in the supplying of management, technical assistance and product sale assistance, it rejected the opportunity to participate in the production, purchase or utilization of petrochemicals, and therefore declined to take any interest in the venture at that time.

13. In early June, 1962, Brown withdrew as an active participant in the promotion of the venture. Under date of June 4, 1962, he informed Chapman and Coan that effective July 1, 1962, he was joining the management of Murphy Corporation and would devote his full time to the affairs of that corporation. Coan and Chapman determined, however, that the experience and progress made by the venture should not be lost because of the withdrawal of Brown and sought to find a new person who would undertake the sponsorship of the venture, furnish the necessary promotional funds and carry on the work abandoned by Brown. In this regard, assistance was sought from the representatives of E. M. Warburg & Co. ("Warburg") and Kuhn, Loeb & Co. ("Kuhn-Loeb"), the two New York investment banking firms who had been working on the financing plans of the project.

14. A representative of Warburg suggested to Coan and Chapman that Prudential had the required technical experience, know-how and ability to guide the project to fruition, as well as the financial acumen to develop and carry out the financing plans. Thereafter, numerous meetings were held among Chapman, Coan and representatives

of Warburg and Kuhn-Loeb with representatives of Prudential, who included Mr. Nathan M. Shippee ("Shippee"), its Chairman of the Board, Mr. Edward J. Willey ("Willey"), its President, and Mr. T. R. Young ("Young"), its chemical engineering consultant. As a result of these meetings, it was agreed that Prudential would become the sponsor of the venture, make all organizational and contractual arrangements and advance the necessary funds until the project was confirmed. Prudential also agreed that Coan would continue to act as management consultant and that Chapman would continue as Washington representative and to serve as general counsel of the Puerto Rican company which would operate the project.

15. Prudential, principally through the activities of Shippee, Willey and Young, set out on the necessary work to find a new crude oil supplier to replace Murphy Corporation; to locate purchasers for the petrochemical raw materials; to arrange for further feasibility and engineering studies for the project; to prepare and prosecute the application for an import license; to arrange for the site location of the project facilities; to arrange for financing plans; and, in general, to do, perform and make contractual arrangements for all of the work, services and planning necessary for, and incident to, the financing, construction and operation of the project facilities.

16. As part of these activities Prudential entered into an arrangement with Phillips that Phillips would be the supplier of the crude oil to be used at the project and would purchase the refined petroleum products not used in petrochemical operations. Phillips also agreed to furnish consultation and assistance in the design, construction and operation of the project facilities. The participation of Phillips is confirmed by its commitments contained in the letter dated November 13, 1962, addressed to Prudential and signed by Phillips' President, Mr. Stanley Learned, a copy of which is annexed hereto as Exhibit A and made a part hereof for all purposes.

A

17. In light of the commitments undertaken by Phillips, as set forth in Exhibit A, Prudential accepted Phillips as a co-participant in the project, and did thereafter deliver to Phillips all of its existing material, ideas, plans and projections, and worked with, consulted and sought the advice of Phillips and its employees as a co-venturer and party-in-interest. The relationship as agreed to by both parties and thereafter carried out by Prudential was one of good faith and mutual confidence. A most important feature of the agreement was that each party would absolutely trust the other. Prudential has, at all times, fully complied with this requirement.

18. Dr. A. Dale Fischbeck, the manager in charge of Phillips' petrochemical plants development, was accepted as technical adviser to the venture and was included by Phillips as one of its members of the Prudential-Phillips team working on the development of the project. In his capacity as a member of such team, there was made available to Dr. Fischbeck and other persons in the Phillips organization working with him, all of the technical data, concepts, specifications, plans, designs, engineering studies, projections and information developed by Prudential with respect to the project. In the course of this work, Dr. Fischbeck and others in the Phillips organization participated in, advised and were consulted by Prudential with respect to most of the major matters and decisions incident to and connected with the carrying out of the venture and the plans for the establishment of the project. In addition, they were introduced to and became acquainted with many of the persons outside Prudential's organization who were working with Prudential on various aspects of the project including consultants, engineers, attorneys and government officials, whose experience and familiarity with the project was of prime importance to the success of the venture.

19. Within a short time after Prudential assumed sponsorship of the venture, Prudential came to the realization that the project in the form as then conceived was not workable. Prudential learned that there was no practical

opportunity to secure advance firm commitments for the purchase of the petrochemical raw materials in sufficient quantities to meet the output requirements of the refinery facilities, and it concluded that the establishment of hundreds of millions of dollars worth of petrochemical plants to consume such raw materials could not be committed for prior to the completion of the refinery facilities and could be planned for and installed only over a long period of time. Accordingly, Prudential developed a new concept under which the proposed project would be limited, in the first instance, to a "core" refinery which, though designed to produce the maximum yield of petrochemical raw materials to feed various "satellite" petrochemical plants, would be sufficiently viable to produce larger amounts of normal refinery products during the early years when the "satellite" and other consuming plants could be installed. As part of this concept it was to be the function of the venture, as a principal activity, to work with and assist E.D.A. over a period of at least ten years to attract new petrochemical and other consuming industries to the Commonwealth and to serve as a "quasi" public utility to serve such industries.

20. Prudential's new concept was presented to and discussed with representatives of E.D.A. at meetings held in Puerto Rico from November 28, 1962 to December 1, 1962. As a result of these meetings, an understanding was reached between Prudential and E.D.A. to the effect that the new concept would be submitted for study to an independent engineering consulting firm to be employed to represent the Commonwealth. In the event that the project proposed under the new concept received technical endorsement by such independent study, it was agreed that the Commonwealth would sponsor the project, would grant to the venture exclusivity for the chemical industry, would grant it tax and other protection, would lease it a plant site, and would supply complete development of a new industrial area in which the project was to be located exclusive of the direct project facilities. At later meetings and at the

initiative of Prudential. Arthur D. Little, Inc., a management consulting firm located in Cambridge, Massachusetts, was selected as the independent consultant to review the new project concept and thereafter the approval of such firm was given to the Commonwealth.

21. On the basis of the new concept, Prudential went forward with the activities of the venture in all of its many aspects. A principal part of the work consisted of the preparation by Prudential of the application for an allocation of oil imports to be used at the project facilities. This application was to incorporate most of the details of the project developed by the venture and by the engineering, advisory and investment banking firms acting on its behalf or in association with it, and constituted, in effect, a project outline. As part of its activities as a participant in the venture, Phillips undertook to cause a comprehensive marketing study to be conducted, which study was intended to be incorporated in the project outline. At a meeting held on March 27, 1963, among Shippee, Young, Dr. Fischbeck, and Messrs. Frank Page and Al Smith, employees of Phillips, and called for the purpose of reviewing the results of the marketing study, Dr. Fischbeck requested that Phillips be furnished with the draft of the project outline, as developed to that date, so that its marketing and engineering divisions could bring it up-to-date with current price and cost data. Prudential intended that its project outline would then be submitted on its behalf by Chapman to the Department of the Interior as the application for an allocation of an oil import quota for the project.

22. On April 29, 1963, Dr. Fischbeck wrote to Shippee as follows:

> "Following our meeting of March 27, the proposal outlined was brought to the attention of Phillips' management for consideration. It was decided that any detailed studies on the part of Phillips would be premature at this time, and that our further interest in the project will depend upon the prior establishment of an import quota. I understand Mr. Chap-

man has been advised by our management of the Phillips' position."

23. Notwithstanding the failure of Phillips to complete the marketing study, Phillips and Prudential continued jointly to carry the project forward and Dr. Fischbeck and other employees of Phillips were kept apprised of current developments. In May, 1963, Shippee submitted to Mr. Richard Holland, an employee of Phillips a complete, current working copy of the project outline for the purpose of having this material prepared in final form and reproduced; and on May 29, 1963, three finished copies were submitted to Chapman for presentation to the Department of the Interior. It was decided, however, to delay the presentation of the application pending further efforts to obtain certain marketing and engineering data from Phillips.

24. On July 2, 1963, a meeting was held among Chapman, Coan, Young, Shippee and other representatives of Prudental, at which the necessity to obtain fuller cooperation from Phillips was discussed. Particular attention was directed to the provisions of Section 21(b)(2) of the Oil Import Regulation No. 1 requiring that the application for an allocation of an oil import quota be filed, even in special circumstances, only in the name of a person having an importing history, such as Phillips. It was also agreed that Chapman would undertake to "quarterback the project in Washington" and would continue the efforts to obtain the full support of Phillips and to push for a revision of the Oil Import Regulations specifically to permit the granting of an allocation for an import quota for the project and eliminate the requirement that the applicant have an importing history. Also certain agreements were reached under which Prudential would allocate to Chapman and Coan certain shares of the Puerto Rican company to be organized for the purpose of operating the project.

25. On December 27, 1963, revision 4 to the Oil Import Regulation No. 1 was promulgated, but such revised Regulation did not amend the requirements for importation of oils

into Puerto Rico or establish an allocation for the project. Thereupon, under date of January 15, 1964, a "Petition for Allocation of Unfinished Oil—Puerto Rico" under the designation "In the Matter of Phillips Petroleum Co., Petitioner" and signed "Oscar L. Chapman", was filed with the Oil Import Appeals Board, pursuant to the provisions of the aforesaid Section 21(b)(2) of the Oil Import Regulation No. 1. Thereafter, Chapman filed with the Oil Import Appeals Board various briefs and memoranda in support of the Petition and a public hearing was held thereon in Washington, D. C., on July 31, 1964.

26. During this period, representatives of Prudential consulted with and reported to representatives of Phillips on matters relating to the project and in support of the pending Petition. Prudential and its associates in the venture assisted Phillips in preparing materials for such public hearings and in connection with documents, memoranda, briefs, statements and other matters relating thereto. In particular, they assisted in procuring the full support of the E.D.A. and in causing its Administrator, Mr. Rafael Durand, to testify in favor of the project. During the course of such testimony, Mr. Durand stated that the project covered by the Phillips Petition was:

> ". . . . the result of three years of effort and negotiation in which our government sought to interest elements of the petroleum and chemical industries in establishing in Puerto Rico the core of a petrochemical effort."

27. The only persons, other than Mr. Durand, who appeared at the hearing and testified in favor of the granting of the Petition were representatives of Phillips. Representatives of many oil companies, including those already operating facilities in Puerto Rico, testified in opposition. No representative of Prudential, nor any of the persons acting in association with it, testified at the hearing.

28. Under date of May 14, 1965, the Department of the Interior announced that on the basis of a binding arrangement to be entered into between Phillips and the Commonwealth for the development of petrochemical producing and processing facilities in Puerto Rico, the Department would recommend changes in the oil import control program to permit the importation of feed stocks for the project facilities.

29. On May 27, 1965, an agreement was entered into between Phillips and E.D.A., on behalf of the Commonwealth, relating to the formation of a corporation to be known as "Phillips Puerto Rico Core Company" ("Core"), and to be jointly owned (75% by Phillips and 25% by the Puerto Rico Industrial Development Company). It was agreed that Core would construct, own and operate, under special license and grants received from the Commonwealth, a complex of refinery facilities designed to synthesize and separate selected groups of hydrocarbons from petroleum naphtha. It was proposed that the imported light naphtha (Venezuelan supply) would be converted into certain limited number of petrochemical raw materials and, to a large degree, into motor gasoline, but that the utilization of the facilities for the production of petrochemical raw materials would be increased as rapidly as justified economically.

30. Under date of December 24, 1965, Section 15 of the Oil Import Regulation No. 1 was further amended, in substance, to authorize allocation of crude oil and unfinished oils to persons proposing to construct refinery facilities in Puerto Rico which would promote substantial expansion of employment through industrial development in instances where the Secretary of the Interior determines that the accomplishment of the objectives of the Presidential Proclamation 3279 would not be impaired. On the same day, the Secretary of the Interior announced the allocation of an import quota to Core permitting the importation of 50,000 barrels per day of low boiling distillates (naphtha)

into Puerto Rico, effective January 1, 1966, for use pursuant to the aforesaid agreement of May 27, 1965.

31. Phillips, through Core, has undertaken the design, construction and operation of the refinery facilities at a newly created industrial district, located approximately three miles southwest of the City of Guayama on land leased from the Commonwealth. It is contemplated that such refinery facilities will start up operation in September, 1967. In addition, Phillips has entered into a joint venture for the construction of a nylon fiber plant adjacent to the Core facilities, construction of which began in June, 1966, and which is scheduled to start up operation in November, 1967. Under present plans, projections are being made to attract other chemical and petrochemical plants to be established adjacent to, and to be supplied with raw materials from, the Core facilities at an installed cost estimated to be in excess of $600,000,000 over a ten-year period, which plants will ultimately provide raw materials for consumer product industries, such as, synthetic textiles, plastics, synthetic rubber goods and a variety of agricultural chemicals and fertilizers.

32. Since the allocation of the aforesaid import quota, Phillips has refused to acknowledge that Prudential and its predecessors in interest have any interest, direct or indirect, in the project or in any of the facilities being constructed in the Commonwealth of Puerto Rico.

33. The petrochemical complex being built by Core and sponsored by Phillips constitutes the successful consummation of the venture as conceived and initiated by Prudential.

34. Pursuant to the acts, representations and agreements between Prudential and Phillips, a joint venture was formed between the parties pursuant to which Prudential was to acquire, upon successful consummation of the venture, the equity interest in the company to be organized to construct and operate the project facilities and Phillips was to receive the right to supply, from its available sources, the crude or unfinished oils to be processed at the project

and the right to purchase all of the products of the refinery with the exception of the petrochemical raw materials. During the course of the joint venture, and pursuant thereto, Prudential and its representatives disclosed to Phillips and its representatives all of the details, specifications, ideas, concepts, innovations, information, contacts, engineering data and designs which made it possible for the project to be successfully completed. Phillips has misappropriated and wrongfully excluded Prudential from the fruits of the venture obtained by their joint efforts and from the valuable business, properties, interests, rights and assets obtained by reason thereof.

35. Although heretofore duly demanded, Phillips has failed and refused and still fails and refuses to account to Prudential for the fruits of the joint venture and to pay over to Prudential the business properties, interests and rights acquired by Phillips in its own name but for the account of the joint venture, including, but not limited to, the equity interest held by Phillips in Core, which rightfully and in equity belong to Prudential.

36. By reason of the foregoing, Phillips has breached its agreement and its duty of trust and fair dealing to Prudential and holds the fruits and benefits of the venture, including the equity interest in Core, for the right and benefit of Prudential.

37. The principal asset of Core and Phillips derived through the efforts of Prudential is the quota to import into the United States 50,000 barrels a day of light naphtha. The allocation of an oil import quota is a unique property right. No oil import quota may be granted without the consent and approval of the Department of the Interior upon a proper showing, as set forth in the Oil Import Regulations. With the granting of each oil import quota, the opportunity to obtain another allocation is more remote. In this instance, with the creation of a new industry in Puerto Rico requiring time and a competitive climate for growth, any reasonable probability of Prudential's obtain-

ing another quota upon a new application is so infinitesimal as to be, for all practical purposes, nonexistent. Accordingly, the only manner in which plaintiff can be made whole is by the performance by Phillips of its legal obligations.

38. Since each barrel of light naphtha is the equivalent in low boiling ingredients of three to four barrels of crude petroleum, and since imported light naphtha is considerably cheaper than the comparable domestic product, the quota represents an economic advantage to a domestic marketer amounting to approximately two dollars a barrel. During the ten-year period of the initial term of the allocation granted by the Department of the Interior to Core, the import quota has a value of $365,000,000. Based on the long range outlook for world energy resources, there presently exists the reasonable expectancy that this allocation will be renewed, again and again, for successive ten-year periods. Assuming, conservatively, that only two such renewals are to be received by Core, the value of the import quota over a thirty-year period is $1,095,000,000.

39. Prudential has no adequate remedy at law.

For a Second Claim for Relief.

40. Prudential repeats and realleges Paragraphs "1" through "33," inclusive, and Paragraphs "37" through "39," inclusive, of this complaint, as though set forth in full in this Second Claim.

41. Pursuant to the acts, representations and agreements between Prudential and Phillips, Prudential and its representatives disclosed to Phillips and its representatives all of the details, specifications, ideas, concepts, innovations, information contacts, engineering data and designs in trust and confidence to be used solely for the benefit and in furtherance of the interests of Prudential, and Phillips thereafter did misappropriate the same for its own use and benefit, and did thereby inflict upon Pruden-

tial and upon its valuable business properties, interests, rights and assets the wilful, intentional and malicious injuries and harm hereinabove set forth.

For a Third Claim for Relief.

42. Prudential repeats and realleges Paragraphs "1" through "33," inclusive, and Paragraphs "37" through "39," inclusive, of this complaint, as though set forth in full in this Third Claim.

43. Phillips intended by its acts, statements and representations falsely to convince Prudential that Phillips had a continuing interest by participating with Prudential in the project and the sharing of the benefits thereof while concealing from Prudential its true intention to misappropriate to itself the full benefits of the project and all of the business properties, interests, rights and assets accruing therefrom, and to exclude Prudential therefrom. Phillips' purpose was to induce Prudential: (a) to disclose and deliver to Phillips the confidential details, specifications, ideas, concepts, innovations, information, contacts, engineering data and designs pertaining to the installation, operation, management and financing of the project, and (b) to cooperate with Phillips in obtaining the necessary rights, licenses, permits, quotas, privileges, leases and other grants necessary to the consummation of the project in Phillips' name, and (c) to cause Prudential to refrain from seeking any such grants or establishing any such business solely in its own behalf.

44. Prudential would not have revealed such confidential matters to Phillips nor cooperated with it in obtaining the rights, licenses, benefits and other grants which it obtained but for Phillips' deceitful conduct as aforesaid.

45. By reason of the foregoing, Phillips, in equity, holds the fruits and benefits of the project, and all of its interests therein, on a constructive trust for the benefit of Prudential.

For a Fourth Claim for Relief.

46. Prudential repeats and realleges Paragraphs "1" through "33," inclusive, and Paragraphs "37" through "39," inclusive, of this complaint, as though set forth in full in this Fourth Claim.

47. Prudential and the persons affiliated with it refrained from taking any action which would have interfered with or in any way could have been detrimental to the action being taken by Phillips to secure any of the rights, licenses, permits, quotas, privileges, leases and other grants necessary to be obtained by it for the establishment of the business and interests in the project.

48. The forebearance of Prudential was caused directly by the acts, representations and agreements of Phillips, which creates as a fact of equity the right of Prudential to share in the fruits and benefits accruing therefrom.

WHEREFORE, Plaintiff demands judgment as follows:

1. That an accounting be had between plaintiff and defendant Phillips as to the transactions had in joint venture hereinabove alleged and that a division be made of the respective rights and interests of the parties in said joint venture in accordance with their agreements and understandings.

2. That upon completion of such accounting, judgment be entered directing Phillips to pay over to plaintiff all business rights, properties, interests and assets, and particularly, but not limited to, the equity interest in Core, which Phillips holds in its name but for the account and benefit of Prudential.

3. That judgment be entered directing Phillips to account for and pay over to plaintiff all business rights, properties, interests and assets which it holds in its name but for the account and as trustee, constructive or otherwise, for Prudential.

A

4. That judgment be entered against Phillips awarding to plaintiff recovery of all losses, damages, costs and expenses sustained on account of the claims set forth in the First, Second, Third and Fourth Claims herein, together with interest and reasonable attorneys' fees and costs and disbursements of this action, and

5. That plaintiff be awarded such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 27, 1967

PALMER, SERLES, DELANEY & SHAW

By William L. Scott, a Partner
Attorneys for Plaintiff
62 William Street,
New York, New York 10005.

ROBERT F. CONRAD,
815 Connecticut Avenue, N. W.
Washington, D. C. 20006
Of Counsel

EXHIBIT A

PHILLIPS PETROLEUM COMPANY

BARTLESVILLE, OKLAHOMA

November 13, 1962

STANLEY LEARNED
PRESIDENT

PRUDENTIAL OIL CORPORATION
21 West Putnam
Greenwich, Connecticut

Attn: Mr. N. M. Shippee, Chairman

Gentlemen:

In connection with the Puerto Rico Oil and Petrochemical Company's petrochemical complex to be built in Puerto Rico, Phillips Petroleum Company is prepared to:

1—Furnish 30,000 to 60,000 barrels per day of crude oil for charge stock;

2—Purchase the refined petroleum products not consumed in the petrochemical operations;

3—Counsel with you and assist, if you wish, in the design and construction and operation of the proposed facilities.

Whenever you desire, we shall be glad to have our representative work with you to negotiate and complete contracts.

Very truly yours,

STANLEY LEARNED

A

C633)

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

- x

PRUDENTIAL OIL CORPORATION, :

Plaintiff, :

-against- :

PHILLIPS PETROLEUM COMPANY, :

Defendant. :

- x

B

67 Civ. 3748

ANSWER

Defendant, by its attorneys, for its Answer to the Complaint alleges:

1. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 1 of the Complaint.

2. Defendant admits the allegations of Paragraph 2 of the Complaint.

3. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 3 of the Complaint.

4. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 4 of the Complaint.

5. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 5 of the Complaint.

6. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 6 of the Complaint, except admits that there were at least two petroleum refineries operating in Puerto Rico in 1961.

7. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 7 of the Complaint.

B

8. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 8 of the Complaint, except admits that an oil import control program was established by the United States under Presidential Proclamation 3279 (24 Fed. Register p. 1781, March 12, 1959) and the Oil Import Regulations of the United States Department of the Interior issued pursuant to that Proclamation (32A CFR Ch. X, OI Reg. 1) and respectfully refers to such official records for a description of the provisions and procedures of such program.

9. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 9 of the Complaint.

10. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 10 of the Complaint.

11. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 11 of the Complaint.

12. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 12 of the Complaint, except admits that J. P. Coan and Bruce K. Brown during the first six months of 1962 discussed with representatives of defendant the possible establishment of a refinery-petrochemical complex in Puerto Rico and that defendant informed Mr. Coan and Mr. Brown that defendant had no interest in pursuing the matter further at that time with Mr. Coan or Mr. Brown.

13. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 13 of the Complaint.

14. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 14 of the Complaint.

B

15. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 15 of the Complaint.

16. Defendant denies the allegations of Paragraph 16 of the Complaint, except admits that Exhibit A annexed to the Complaint is a correct copy of a letter dated November 13, 1962 addressed to Prudential Oil Corporation from defendant and refers to the text of such letter for an accurate statement of its content.

17. Defendant denies the allegations of Paragraph 17 of the Complaint.

18. Defendant denies the allegations of Paragraph 18 of the Complaint.

19. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 19 of the Complaint, except denies that the concept of a "core" refinery was either a new concept or a concept developed by plaintiff or by plaintiff's alleged assignors.

20. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 20 of the Complaint.

21. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 21, except denies that it undertook to cause a

comprehensive marketing study to be conducted or that it undertook any activities as a participant in any venture to which the plaintiff or its alleged assignors were parties or that it was associated in any manner with any venture to which the plaintiff or its alleged assignors were parties, and further denies that defendant assumed any obligation to perform any function as to any materials left with it by N. M. Shippee or Thomas Young in March 1963.

B

22. Defendant admits the allegations of Paragraph 22 of the Complaint.

23. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 23 of the Complaint, except denies that defendant participated jointly in carrying forward any project or venture to which plaintiff or its alleged assignors were parties and further denies that defendant undertook to take any action with respect to any materials left by N. M. Shippee with defendant in May 1963.

24. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 24 of the Complaint.

25. Defendant admits that on December 27, 1963 Revision 4 to the Oil Import Regulation No. 1 was promulgated (32A CFR Ch. X, OI Reg. 1) and respectfully refers to the official text of said revision for a full and complete statement of its contents; defendant further admits that a public hearing was held in Washington, D.C. on July 31, 1964 before the United States Department of the Interior, Office of Oil and Gas, in the matter entitled "Oil Imports from Puerto Rico" and respectfully refers to the official file in that matter for a full and accurate

description of the papers filed and proceedings held in connection with that matter.

26. Defendant denies the allegations of Paragraph 26 of the Complaint, except admits that Mr. Rafael Durand testified on July 31, 1964 before the United States Department of the Interior, Office of Oil and Gas, in the matter entitled "Oil Imports from Puerto Rico" and for a full and accurate statement of his testimony respectfully refers to the official transcript of those proceedings.

B

27. Defendant admits the allegations of Paragraph 27 of the Complaint.

28. Defendant denies the allegations of Paragraph 28 of the Complaint, except admits that under date of May 14, 1965 the Department of the Interior announced that on the basis of a binding arrangement to be entered into between defendant and the Commonwealth of Puerto Rico for the development and construction of a petrochemical complex the Department would recommend changes in the oil import control program to permit the importation of feed stocks for the facilities to be constructed pursuant to such arrangement.

29. Defendant admits the allegations of Paragraph 29 of the Complaint with respect to the execution of an agreement between defendant and the Commonwealth of Puerto Rico dated May 27, 1965 and respectfully refers to the agreement for a full and accurate statement of the terms of the agreement.

30. Defendant denies the allegations of Paragraph 30 of the Complaint, except admits that Section 15 of the Oil Import Regulation No. 1 was amended as of December 24, 1965 (32A CFR Ch. X, OI Reg. 1, § 15) and

respectfully refers to the text of the amendment for a full and accurate statement thereof.

31. Defendant denies the allegations of Paragraph 31 of the Complaint, except admits that Phillips Puerto Rico Core Inc. has undertaken the design, construction and operation of petrochemical facilities at a newly created industrial district, located approximately three miles southwest of the city of Guayama on land leased from the Commonwealth and that defendant has a stock interest in a corporation which began in June 1966 the construction of a nylon fiber plant adjacent to the petrochemical facilities.

B

32. Defendant denies the allegations of Paragraph 32 of the Complaint, except admits and avers that at all times it has refused to acknowledge that plaintiff or its alleged assignors have any interest, direct or indirect, in the petrochemical facilities of Phillips Puerto Rico Core Inc. and that at no time has plaintiff or its alleged assignors had nor do they now have any interest in any project or any facilities constructed or to be constructed by Phillips Puerto Rico Core Inc. in the Commonwealth of Puerto Rico.

33. Defendant denies the allegations of Paragraph 33 of the Complaint.

34. Defendant denies the allegations of Paragraph 34 of the Complaint.

35. Defendant denies the allegations of Paragraph 35 of the Complaint, except admits and avers that defendant has refused and still refuses to account or pay to plaintiff or its alleged assignors any business properties, interests and rights acquired by defendant and

denies that defendant associated in any manner with any venture to which plaintiff or its alleged assignors were parties, or that defendant acquired any properties, interests or rights in its name for the account of any joint venture to which plaintiff or its alleged assignors are parties or that plaintiff or its alleged assignors have any interest whatsoever in any properties, interests or rights held by defendant.

B

36. Defendant denies the allegations of Paragraph 36 of the Complaint.

37. Defendant denies the allegations of Paragraph 37 of the Complaint, except admits that no oil import quota may be granted without the approval of the Department of the Interior pursuant to the Oil Import Regulations and denies knowledge or information sufficient to form a belief as to the probability of plaintiff or its alleged assignors obtaining an oil import quota.

38. Defendant denies the allegations of Paragraph 38 of the Complaint.

39. Defendant denies the allegations of Paragraph 39 of the Complaint and avers that plaintiff has no cause of action against defendant.

40. Defendant repeats the allegations of Paragraphs 1 through 33, inclusive, and Paragraphs 37 through 39, inclusive, of the Answer in response to Paragraph 40 of the Complaint.

41. Defendant denies the allegations of Paragraph 41 of the Complaint.

42. Defendant repeats the allegations of Paragraphs 1 through 33, inclusive, and Paragraphs 37 through 39, inclusive, of the Answer in response to Paragraph 42 of the Complaint.

43. Defendant denies the allegations of Paragraph 43 of the Complaint.

44. Defendant denies the allegations of Paragraph 44 of the Complaint.

B

45. Defendant denies the allegations of Paragraph 45 of the Complaint.

46. Defendant repeats the allegations of Paragraphs 1 through 33, inclusive, and Paragraphs 37 through 39, inclusive, of the Answer in response to Paragraph 46 of the Complaint.

47. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 47 of the Complaint.

48. Defendant denies the allegations of Paragraph 48 of the Complaint.

AS A FIRST DEFENSE

The Complaint fails to state a claim against defendant on which relief can be granted.

AS A SECOND DEFENSE

The Court has no jurisdiction over the subject matter of the action pursuant to 28 U.S.C. § 1359.

AS A THIRD DEFENSE

Plaintiff is not entitled to maintain this suit by reason of laches. Plaintiff commenced this action an unreasonable length of time after it or its alleged assignors acquired notice of material facts giving rise to its complaint and the prosecution of this action at this time causes great injury and prejudice to defendant.

WHEREFORE, plaintiff demands judgment dismissing the Complaint and for costs and disbursements in the action.

B

SULLIVAN & CROMWELL

By _____
(A Member of the Firm)

Attorneys for Defendant
Phillips Petroleum Company,
48 Wall Street,
New York, N.Y. 10005.

HAnover 2-8100

Dated: October 19, 1967

Copy

A 289

U.S. DISTRICT COURT
FILED
APR 6 1975
S.D. OF N.Y.

FF 42000

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PRUDENTIAL OIL CORPORATION,

Plaintiff,

v.

PHILLIPS PETROLEUM COMPANY,

Defendant.

---

67 Civ. 3748

MEMORANDUM

EDELSTEIN, Chief Judge

Pursuant to Fed. R. Civ. P. 39(a) Defendant has moved this court for an order "striking plaintiff's demand for a jury trial in this action on the ground that under the Seventh Amendment to the United States Constitution, as implemented by Rule 38, F.R.C.P., plaintiff has no right to a jury trial in this action." Defendant's Notice of Motion at 1. Defendant does not object to the timeliness of Plaintiff's jury demand.

Plaintiff's complaint is extremely prolix; thus, for purposes of this memorandum, the court will attempt to deal with the facts as alleged in this complaint as succinctly and simply as it can.

Plaintiff is the assignee of the interest of a corporation that engaged primarily in oil exploration financing. Plaintiff alleges that the Economic Development Administration of Puerto Rico (EDA) desired the establishment of a petrochemical production facility on the Island of Puerto Rico in order to increase general economic growth of the Island. At the time that the operative events in this action occurred Puerto Rico already

had two oil refineries. The project undertaken by the E.D.A. envisaged the construction of a third refinery with satellite petrochemical facilities to utilize the petroleum derivatives from the third refinery. The project was complicated from an economic, financial and political standpoint.

Plaintiff was brought into the transaction by E.D.A. on the recommendation of two New York City investment banking houses after the withdrawal from the initial promotion group of one of its active participants. Plaintiff undertook sponsorship of the project and as part of its activities Plaintiff entered into an arrangement with Defendant whereby Defendant would supply the crude oil for the project and purchase the refined products not used in the petrochemical operations. Allegedly, Defendant also undertook to furnish consultation in the design, construction and operation of the project. Attached as Exhibit A to the complaint is a letter from Defendant's President to Mr. N. M. Shippee, Chairman of Plaintiff, which states that in connection with the project Phillips is prepared to: (1) provide raw crude oil for the refinery and (2) to purchase refined petroleum products not consumed in the then contemplated petrochemical facilities, and (3) to counsel and assist Plaintiff in the design, construction and operation of the proposed facility. Over a period of a few years Plaintiff and Defendant worked closely on the project. Plaintiff asserts that it divulged to Defendant detailed information that Plaintiff had accumulated as a result of its efforts.

After a period of time it was determined that the plans for an overall petrochemical facility were not feasible in light of the difficulty encountered in obtaining commitments from potential users of petrochemical products from the refinery. Because of this problem the plans for the project were altered by narrowing the project initially to a 'core' refinery which, though designed to produce the maximum yield of petrochemical raw materials to feed various 'satellite' petrochemical plants, would be sufficiently viable to produce larger amounts of normal refinery products during the early years when the 'satellite' and other consuming plants could be installed." It was contemplated that after the refinery was constructed and began operations, petrochemical users could be attracted to build other manufacturing facilities.

Plaintiff contends that in order for the entire project to become feasible it was necessary to obtain an allocation of oil imports from the Department of the Interior, the application for which had to be made by Phillips for reasons not relevant to the instant motion. It is further alleged that some time after the successful application for the change in the Oil Import Regulations, Plaintiff was excluded from the venture by Defendant-Phillips. Phillips and E.D.A. brought the project to a successful conclusion. The refinery that was ultimately constructed was operated by a corporation called "Phillips Puerto Rico Core Co." ("Core").

Upon these facts Plaintiff raises four claims for relief,

with respect to each of which Plaintiff asserts that it has no adequate remedy at law. Complaint ¶ 39 . The first claim is, essentially, that "[p]ursuant to the acts, representations and agreements between Prudential and Phillips, a joint venture was formed between the parties"; that pursuant to the joint venture Plaintiff disclosed to Defendants all of the details, ideas and information which made it possible for the project to be successfully completed; and that Defendant has (a) misappropriated and wrongfully excluded Plaintiff from the fruits of the joint venture, (b) refused to account to Plaintiff for the fruits of the joint venture and to pay over to Plaintiff the business properties, rights and interests acquired by Defendant in its own name but for the account of the joint venture, and (c) by reason of the foregoing, Defendant has breached its agreement and its duty of trust and fair dealing to Plaintiff and holds the fruits of the venture, including the equity interest in Core, for the right and benefit of Plaintiff.

For its second claim, Plaintiff alleges misappropriation by Defendant of ideas, data and the like developed by Plaintiff and disclosed to Defendant pursuant to Defendant's acts, agreements and representations. Alleging that the information was disclosed in trust and confidence to Defendant and to be used solely for Plaintiff's benefit, Plaintiff states that by its misappropriation, Defendant inflicted upon Plaintiff wilful, intentional and malicious harm.

Similar to the second claim, the third claim alleges that Defendant, by its acts, statements and representations intended to induce Plaintiff, inter alia, to disclose its data and to

with respect to each of which Plaintiff asserts that it has no adequate remedy at law. Complaint ¶ 39 . The first claim is, essentially, that "[p]ursuant to the acts, representations and agreements between Prudential and Phillips, a joint venture was formed between the parties"; that pursuant to the joint-venture Plaintiff disclosed to Defendants all of the details, ideas and information which made it possible for the project to be successfully completed; and that Defendant has (a) misappropriated and wrongfully excluded Plaintiff from the fruits of the joint venture, (b) refused to account to Plaintiff for the fruits of the joint venture and to pay over to Plaintiff the business properties, rights and interests acquired by Defendant in its own name but for the account of the joint venture, and (c) by reason of the foregoing, Defendant has breached its agreement and its duty of trust and fair dealing to Plaintiff and holds the fruits of the venture, including the equity interest in Core, for the right and benefit of Plaintiff.

For its second claim, Plaintiff alleges misappropriation by Defendant of ideas, data and the like developed by Plaintiff and disclosed to Defendant pursuant to Defendant's acts, agreements and representations. Alleging that the information was disclosed in trust and confidence to Defendant and to be used solely for Plaintiff's benefit, Plaintiff states that by its misappropriation, Defendant inflicted upon Plaintiff wilful, intentional and malicious harm.

Similar to the second claim, the third claim alleges that Defendant, by its acts, statements and representations intended to induce Plaintiff, inter alia, to disclose its data and to

3. That judgment be entered directing Phillips to account for and pay over to plaintiff all business rights, properties, interests and assets which it holds in its name but for the account and as trustee, constructive or otherwise, for Prudential.

4. That judgment be entered against Phillips awarding to plaintiff recovery of all losses, damages, costs and expenses sustained on account of the claims set forth in the First, Second, Third and Fourth Claims herein, together with interest and reasonable attorneys' fees and costs and disbursements of this action, and

5. That plaintiff be awarded such other and further relief as the Court may deem just and proper.

Broadly speaking, Defendant's answer denied either the allegations outright or sufficient knowledge or information to form a belief as to the allegations of the operative paragraphs of the complaint.

Against this background Defendant's motion must be viewed. For the reasons set forth below the court believes that claims properly triable to a jury exist in the instant action which require that Plaintiff's demand for a jury trial be upheld.

The constitutional basis for the right to a jury trial is set forth in the Seventh Amendment:

> In Suits at common law, where the value in controversy shall exceed twenty-dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

The preservation of this right is reaffirmed in Rule 38(a) of the Federal Rules of Civil Procedure which provides that "the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate." While few would dispute that challenges to this right, viewed against the merger of law and equity in the federal courts,

have caused courts and commentators serious analytical difficulties over the years, the inescapable teaching of recent Supreme Court decisions is that there is a clear federal policy in light of the Seventh Amendment favoring jury trials and that, in doubtful cases, that policy should be favored. Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959); Dairy Queen, Inc. v. Wood, 369 U.S. 469 (1962); Ross v. Bernhard, 396 U.S. 531 (1970); 9 C. Wright & A. Miller, Federal Practice and Procedure § 2302 at 21 (1971).

In this light it is similarly inescapable that the court in this case must recognize the existence, at least in part, of legal claims, and therefore the propriety of Plaintiff's jury demand. Admittedly, there also exist allegations that might suggest the presence, as well, of equitable claims. However, the Supreme Court has consistently held that where both legal and equitable issues are presented in the same case, and even where the legal issues are considered as "incidental" to the equitable issues, if the demand for a jury is timely and properly made it is to be upheld. Dairy Queen, Inc. v. Wood, supra, 369 U.S. at 473. Thus, construing Beacon Theatres, the Fifth Circuit has stated that

> [i]t is . . . immaterial that the case at bar contains a stronger basis for equitable relief than was present in Beacon Theatres. It would make no difference if the equitable cause clearly outweighed the legal cause so that the basic issue of the case taken as a whole is equitable. As long as any legal cause is involved the jury rights it creates control. This is the teaching of Beacon Theatres, as we construe it.

Thermo-Stitch, Inc. v. Chemi-Cord Processing Corp., 294 F.2d 486, 491 (5th Cir. 1961).

With respect to the first "claim," it may reasonably be interpreted as containing "allegations of ordinary breach of contract," Ross v. Bernhard, supra, 396 U.S. at 542, a classic example of a claim cognizable at law. More importantly, without attempting to determine whether there exists only one claim in this case, despite such attempts by both parties, there appears first and foremost and throughout all of the claims which are, essentially, based upon the same set of facts, the allegations that Defendant has, either by the breach of a confidential relationship or through deceit, misappropriated to its own benefit and to the detriment of Plaintiff certain trade or business information developed by Plaintiff. This court agrees with Plaintiff's contention that this presents a legal issue which entitles Plaintiff to a jury trial. See, on very similar facts, Bruce v. Bohanon, 436 F.2d 733, 736 (10th Cir.), cert. denied, 403 U.S. 918 (1971) and cases cited therein; Restatement of Torts, § 757 and comments c & f.

Much has been said on this motion as to the type of relief sought. This court agrees that while the prayer for relief is not controlling it may be considered on a motion such as the instant one. Ross v. Bernhard, supra, 396 U.S. at 538 n. 10; 9 C. Wright & A. Miller, Federal Practice and Procedure § 2304 at 31 (1971). 1/ As recited above, that prayer, which is intended to apply to all the claims contained in the complaint, contains a demand for, inter alia, damages. Coupled with the claims identified above, such a demand "completes" classic legal claims in contract and tort. On this basis alone, Defendant's motion should be denied.

The mere fact that Plaintiff includes in its prayer for relief a demand for an accounting does not alter this decision. As pointed out in Dairy Queen and Bruce, supra, the labels chosen by the pleader do not control. See, generally, 9 C. Wright & A. Miller, Federal Practice and Procedure, § 2310 (1971).

In the Bruce case, a jury trial was permitted on a count involving, in part, a prayer for a decree determining Plaintiff's right to participate with Defendant in the project allegedly established as a result of Defendant's misappropriation of Plaintiff's trade secrets and an "accounting covering all details pertaining to said project." Complaint at 15 (emphasis supplied). Unlike the instant case where the accounting is sought in addition to and therefore, arguably, in connection with damages, the only prayer for damages in Bruce appeared in the second count which was expressly cast "in the alternative, in the event the Court does not grant the equitable relief prayed for upon Count I . . . ." Complaint at 18 (emphasis supplied). Thus, it may reasonably be said that, as compared to Bruce, the instant case presents an even stronger argument in favor of construing the request for an accounting as, at least in part, one for a money judgment, thus entitling Plaintiff to a jury trial under the principles set forth in Dairy Queen v. Wood, supra.

Ross v. Bernhard, supra, of course, suggests a third consideration worthy of examination on a motion such as the one before the court: "the practical abilities and limitations of juries." 396 U.S. at 538 n. 10. Like the Court in Dairy

Queen, supra, this court has not been persuaded that, upon proper instructions from the trial court, a jury would be incapable of determining the issues given to it.

(1) As Professors Wright and Miller point out, to the extent that a particular issue may be considered either legal or equitable depending upon the actual remedy awarded, the Supreme Court has indicated that the constitutionally required solution is to have a jury decide the issue, "even though the court may then have to determine for itself whether to grant relief of a type historically equitable." 9 C. Wright & A. Miller, Federal Practice and Procedure § 2306 at 37 (1971) (emphasis supplied).

/s/ David N. Edelstein
David N. Edelstein
Chief Judge

Dated: New York, New York
April 4, 1975

OFFICE COPY

A 299

D

CERTIFICATE OF INCORPORATION

OF

PRUDENTIAL OIL CORPORATION

* * * * *

FIRST. The name of the corporation is

PRUDENTIAL OIL CORPORATION

SECOND. Its principal office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent is The Corporation Trust Company, No. 100 West Tenth Street, Wilmington 99, Delaware.

THIRD. The nature of the business, or objects or purposes to be transacted, promoted or carried on are:

To purchase, take, lease as lessee or otherwise acquire, to own, use, improve and maintain, and to sell, convey, mortgage, pledge, lease as lessor and otherwise dispose of oil, gas and mineral lands, lands and real estate of all kinds, and the oil gas and mineral rights and interests in lands; to produce therefrom oil, gas, minerals, elements, deposits and substances of all kinds including solids, liquids and gases and to develop and exploit said lands, rights and interests; to develop such lands, rights and interests by,

BEST COPY AVAILABLE

and to enter into and execute contracts for the drilling of wells and the installation of plants, machinery and equipment, and to dispose of the products therefrom either as a raw product or otherwise; to refine and reduce said products, to prepare said products for market and to manufacture from said products any and all marketable commodities.

To search, prospect and explore for petroleum and other oils, gas and any other useful or valuable substances or products; to drill for, remove, produce, acquire by purchase or otherwise, own, use, store, transport, refine, distill, manufacture, process, prepare for market, sell and otherwise dispose of petroleum and other oils, bitumens, bituminous substances of all kinds, vegetable substances, minerals and gases and all products, by-products and residual products thereof or therefrom; to drill, purchase, take, lease as lessee and otherwise acquire, to own, use, maintain, develop, improve and operate, and to sell, convey, mortgage, pledge, lease as lessor and otherwise dispose of oil, gas and other wells and any articles, materials, machinery, equipment, structures or property used therefor or in connection therewith; and to engage in any trades, businesses and occupations necessary or convenient in connection with any business of the corporation or incidental, related or contributory thereto.

To build, purchase, take, lease as lessee or otherwise acquire, to own, use, maintain, improve and operate, and to sell, convey, mortgage, pledge, lease as lessor and otherwise dispose of or encumber, wells, refineries, stations,

tanks, tank cars, pipe lines, gas mains, conduits, equipment, facilities and properties of all kinds for manufacturing, treating, processing, preparing, concentrating, distilling, purifying, generating, producing, using, storing, handling, transporting, distributing, and in any manner dealing in and with, petroleum and other oils, gas and other volatile substances, vegetable substances, minerals, asphalt, bitumen and bituminous substances and other similar products of every kind and character for any and all purposes whatsoever.

To acquire, by purchase, subscription, contract or otherwise, and to hold, sell, exchange, mortgage, pledge or otherwise dispose of, or turn to account or realize upon, and generally to deal in and with, all forms of securities, including, but not by way of limitation, shares, stocks, bonds, debentures, coupons, notes, scrip, mortgages, evidences of indebtedness, commercial paper, certificates of indebtedness and certificates of interest issued or created in any and all parts of the world by corporations, associations, partnerships, firms, trustees, syndicates, individuals, governments, states, municipalities, and other political and governmental divisions and subdivisions, or by any combinations, organizations, or entities whatsoever, or issued or created by others, irrespective of their form or the name by which they may be described, and all trust participation and other certificates of, and receipts evidencing interest in, any such securities.

To manufacture, purchase or otherwise acquire, invest in, own, mortgage, pledge, sell, assign and transfer or otherwise dispose of, trade, deal in and deal with goods,

wares and merchandise and personal property of every class and description.

To acquire, and pay for in cash, stock or bonds of this corporation or otherwise, the good will, rights, assets and property, and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm, association or corporation.

To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, trade-marks and trade names, relating to or useful in connection with any business of this corporation.

To acquire by purchase, subscription or otherwise, and to receive, hold, own, guarantee, sell, assign, exchange, transfer, mortgage, pledge or otherwise dispose of or deal in and with any of the shares of the capital stock, or any voting trust certificates in respect of the shares of capital stock, scrip, warrants, rights, bonds, debentures, notes, trust receipts, and other securities, obligations, choses in action and evidences of indebtedness or interest issued or created by any corporations, joint stock companies, syndicates, associations, firms, trusts or persons, public or private, or by the government of the United States of America, or by any foreign government, or by any state, territory, province, municipality or other political subdivision or by any governmental agency, and as owner thereof to possess and exercise all the rights, powers and privileges

BEST COPY AVAILABLE

of ownership, including the right to execute consents and vote thereon, and to do any and all acts and things necessary or advisable for the preservation, protection, improvement and enhancement in value thereof.

To enter into, make and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic or government or colony or dependency thereof.

To borrow or raise moneys for any of the purposes of the corporation and, from time to time without limit as to amount, to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any thereof and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the corporation, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such bonds or other obligations of the corporation for its corporate purposes.

To loan to any person, firm or corporation any of its surplus funds, either with or without security.

To purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital except as otherwise permitted by law, and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

To have one or more offices, to carry on all or any of its operations and business and without restriction or limit as to amount to purchase or otherwise acquire, hold, own, mortgage, sell, convey or otherwise dispose of, real and personal property of every class and description in any of the states, districts, territories or colonies of the United States, and in any and all foreign countries, subject to the laws of such state, district, territory, colony or country.

In general, to carry on any other business in connection with the foregoing, and to have and exercise all the powers conferred by the laws of Delaware upon corporations formed under the General Corporation Law of the State of Delaware, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

The objects and purposes specified in the foregoing clauses shall, except where otherwise expressed, be in nowise limited or restricted by reference to, or inference from, the terms of any other clause in this certificate of incorporation, but the objects and purposes specified in each of the foregoing clauses of this article shall be regarded as independent objects and purposes.

FOURTH. The total number of shares of stock which the corporation shall have authority to issue is one hundred fifty thousand (150,000), all of which shares shall be without par value.

FIFTH. The minimum amount of capital with which the corporation will commence business is One Thousand Dollars ($1,000.00).

SIXTH. The names and places of residence of the incorporators are as follows:

NAMES	RESIDENCES
A. D. Atwell	Wilmington, Delawae
F. J. Obara, Jr.	Wilmington, Delaware
A. D. Grier	Wilmington, Delaware

SEVENTH. The corporation is to have perpetual existence.

EIGHTH. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

NINTH. In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make, alter or repeal the by-laws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

By resolution passed by a majority of the whole board, to designate one or more committees, each committee to consist of two or more of the directors of the corporation, which, to the extent provided in the resolution or in the by-laws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the by-laws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding, to sell, lease or exchange all of the property and assets of the corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors shall deem expedient and for the best interests of the corporation.

THIRD. Meetings of stockholders may be held outside the State of Delaware, if the by-laws so provide. The books of the corporation may be kept (subject to any provision contained in the statutes) outside the State of

Delaware at such place or places as may be designated from time to time by the board of directors or in the by-laws of the corporation. Elections of directors need not be by ballot unless the by-laws of the corporation shall so provide.

ELEVENTH. The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

WE, THE UNDERSIGNED, being each of the incorporators hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set our hands and seals this 1st day of March A.D. 1965.

A. D. Atwell (SEAL)

F. J. Obara, Jr. (SEAL)

A. D. Grier (SEAL)

A 308

D

State of Delaware

Office of Secretary of State

I, Elisha C. Dukes, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "PRUDENTIAL OIL CORPORATION", as received and filed in this office the first day of March, A.D. 1965, at 10 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this third day of March in the year of our Lord one thousand nine hundred and sixty-five.

Elisha C. Dukes
Secretary of State

E. Folwell

STATE OF DELAWARE
COUNTY OF NEW CASTLE } ss:

BE IT REMEMBERED that on this 1st day of March A.D. 1965, personally came before me, a Notary Public for the State of Delaware, A. D. Atwell, F. J. Obara, Jr., and A. D. Grier all of the parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

GIVEN under my hand and seal of office the day and year aforesaid.

HOWARD K. WEBB
NOTARY PUBLIC
APPOINTED JUNE 27, 1964
STATE OF DELAWARE
TERM 2 YEARS

HOWARD K. WEBB
Notary Public

THE PRUDENTIAL OIL CORPORATION

(Of Connecticut)

A 310

May 26, 1965

E

STOCKHOLDERS MEETING

A meeting of the Stockholders of The Prudential Oil Corporation, a Connecticut Corporation, was held at the company's offices at 21 West Putnam Avenue, Greenwich, Connecticut, today at 12 p. m. The meeting was preceded by proper notice in writing to all Stockholders.

Mr. E. J. Willey was present with proxies as follows:

R. N. Funkhouser	5,000 Shares
Carleton E. Hammond	1,000 "
Gilbert M. Kiggins	4,000 "
Charles J. Kushell, Jr.	10,000 "
Frank S. Larson	2,000 "
P. H. McLaughlin	5,000 "
Charles W. Nichols, Jr.	10,000 "
Hazard E. Reeves	1,600 "
Nathan M. Shippee	56,500 "

Mr. Layman E. Hendrex, Comptroller, acted as Proctor in counting the proxies. The above proxies were voted unanimously on the following resolutions:

"Resolved that The Prudential Oil Corporation, a Connecticut Corporation, be reorganized as Prudential Oil Corporation, a Delaware Corporation. The Delaware Corporation shall have the same authorized number of shares of Common Stock; i.e., 150,000 shares, and each Shareholder in the Connecticut Corporation shall receive 1 share of stock in the Delaware Corporation for each share in the Connecticut Corporation."

8F

"Resolved that The Prudential Oil Corporation, a Connecticut Corporation, be dissolved as of midnight, June 30, 1965, and that the entire assets, liabilities, and goodwill be transferred to Prudential Oil Corporation, a Delaware Corporation, as of that date in time." A 311

"Resolved that the present Officers and Directors of The Prudential Oil Corporation, a Connecticut Corporation, continue in office until the said June 30, 1965."

There being no further business, the meeting was adjourned at 12:10 p.m.

Layman E. Hendrex,
Proctor

E. J. Willey,
Secretary Pro Tem.

F

MINUTES OF THE FIRST MEETING OF THE BOARD OF DIRECTORS OF PRUDENTIAL OIL CORPORATION HELD ON MAY 26, 1965 A 312

The First Meeting of the Board of Directors of Prudential Oil Corporation was held at the office of the Corporation, One Rockefeller Plaza, New York, New York, on May 26, 1965, at 5:00 o'clock P.M., local time, pursuant to a Notice of Meeting duly sent to all directors of the Corporation. A copy of said Notice was directed to be filed with the records of the Corporation as part of these minutes.

There were present:

Messrs. Nathan M. Shippee
Richard N. Funkhouser
Carleton E. Hammond
Gilbert M. Kiggins
Charles J. Kushell, Jr.

being a quorum of the Board.

Mr. Shippee acted as Chairman of the Meeting and Mr. Kushell, Jr. acted as Secretary.

The Chairman reported to the Meeting that Mr. John W. Little, II and Edward J. Willey had submitted their resignations as directors of the Corporation, effective immediately. There then followed a discussion by the directors whereupon said resignation was accepted.

The Chairman then proposed that by reason of the vacancies created on the Board of Directors of the Corporation, it was necessary to elect two new directors. In this connection, he recommended that Mr. Philip H. McLaughlin and Mr. Robert L. Klotz be elected to fill such vacancies. There then followed a discussion by the directors.

Upon motion duly made and seconded, it was unanimously

F

RESOLVED, that Philip H. McLaughlin and Robert L. Klotz be, and they hereby are, chosen to fill the directorships left vacant by the resignations of John W. Little, II and Edward J. Willey, each to hold office until the next annual election and until his successor is duly elected and shall qualify.

The Chairman stated that the next order of business would be the designation of an Executive Committee of the Board of Directors of the Corporation.

Upon motion duly made and seconded, it was unanimously

RESOLVED, that there shall be an Executive Committee of three (3) members of the Board of Directors which shall have authority to exercise all the powers of the Board in the current business of the Corporation while the Board is not in session; and it was further

RESOLVED, that Nathan M. Shippee, Gilbert M. Kiggins and Philip H. McLaughlin be, and they are hereby, designated as members of the Executive Committee and Nathan M. Shippee to be Chairman thereof.

The Chairman then presented to the Meeting the form of Stock certificate and corporate seal of the Corporation.

Upon motion duly made and seconded, it was unanimously

RESOLVED, that the form of stock certificate of the Corporation presented to this Meeting be, and it hereby is, approved and adopted and that the Secretary is instructed to insert a specimen thereof in the minute book of the Corporation; and it was further

RESOLVED, that the seal, an impression of which is hereto affixed, be, and it hereby is, adopted as the corporate seal of the Corporation.

The Chairman then stated that the next order of business was the election of officers of the Corporation.

F

The following persons were nominated to the offices set forth opposite their respective names, and, there being no further nominations, they were unanimously elected to such offices, each to hold office until his successor shall have been duly elected and qualifies or as otherwise provided in the By-laws of the Corporation:

Chairman of the Board	-	Nathan M. Shippee
Vice President	-	Thomas L. Wilkerson
Vice President	-	Philip H. McLaughlin
Secretary	-	Philip H. McLaughlin
Treasurer	-	Nathan M. Shippee
Assistant Secretary	-	Patricia R. Morel

The Chairman then indicated that certain of the salaries of the officers should be given consideration. There then followed a discussion by the directors.

Upon motion duly made and seconded, it was unanimously

> RESOLVED, that the following annual salaries be paid to the following officers: Thomas L. Wilkerson, Vice President - $20,000; Nathan M. Shippee, Treasurer - $9,600.

The Chairman stated that the next order of business was to consider the acquisition by the Corporation of all of the assets of Prudential Oil Corporation, a Connecticut corporation, in exchange for 120,500 shares of Common Stock of the Corporation, on the basis of one share of Common Stock of the Corporation for each share of Common

F

Stock outstanding of Prudential Oil Corporation, and the assumption by the Corporation of all of the liabilities of Prudential Oil Corporation, all to be effective as of the close of business on June 30, 1965. There then followed a discussion by the directors, the Chairman also noting that the stockholders of Prudential Oil Corporation had voted to approve the transaction earlier in the day.

Upon motion duly made and seconded, it was unanimously

> RESOLVED, that the Corporation acquire all of the assets of Prudential Oil Corporation, a Connecticut corporation, in exchange for 120,500 shares of Common Stock of the Corporation, without par value, on the basis of one share of Common Stock of the Corporation for each share of Common Stock outstanding of said Prudential Oil Corporation, and the assumption by the Corporation of all of the liabilities of Prudential Oil Corporation, the same to be effective as of the close of business on June 30, 1965; and it was further
>
> RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed to do and perform all such acts and things and to sign such documents, instruments or certificates and to take all such other action as they may deem necessary, proper or convenient to carry out the intent of the foregoing resolution.

The Chairman then stated that consideration was to be given to the opening of a bank account with

Chemical Bank New York Trust Company and, in that connection, the Chairman presented to the Meeting a form of printed resolution in respect to the opening of said account.

Upon motion duly made and seconded, it was unanimously

> RESOLVED, that the printed form of resolution as presented to this Meeting in connection with the opening of a bank account with Chemical Bank New York Trust Company for and on behalf of the Corporation be, and the same hereby is, in all respects, approved and adopted as though herein set forth in full.

In the above connection, the Chairman directed that a copy of the form of printed resolution be attached to the minutes of this Meeting as part of the records of the Corporation.

The Chairman stated that the next order of business was to consider an amendment to the By-laws of the Corporation and, particularly, the addition of a new Article IX to said By-laws, for the purpose of providing for the indemnification of directors, officers and employees of the Corporation.

There then followed a discussion by the

F

directors.

Upon motion duly made and seconded, it was unanimously

RESOLVED, that the By-laws of the Corporation be, and they hereby are, amended so as to create a new Article IX thereof, the same to read as follows:

ARTICLE IX.

Directors, officers or employees of the Company are indemnified to the full extent provided by Delaware Statute.

Each director, officer or employee of the Company made a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was a director, officer or employee of the Company or of any corporation which he served as such at the request of the Company, shall be indemnified by the Company against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such officer, director or employee is liable for negligence or misconduct in the performance of his duties.

The Board of Directors of the Company is authorized to cause the Company to make such payments as may be necessary to settle any action or proceeding brought by the shareholders of the Company against the Company or its officers or directors, if in the opinion of the Board of Directors

F

and of counsel for the Company the action or proceeding is without merit and the expenses and detriment to the Company involved in the defense of such action or proceeding by the Company or its officers or directors exceeds in value the amount of payments necessary to settle such action or proceeding.

There being no further business to come before the Meeting, the Meeting adjourned.

_____

Secretary

G

Certificate of Dissolution by Directors & Stockholders

1. The name of the Corporation is The Prudential Oil Corporation

2. The corporation is dissolved by the following resolution of directors and shareholders:

"Resolved that The Prudential Oil Corporation, a Connecticut Corporation, be dissolved as of midnight, June 30, 1965, and that the entire assets, liabilities, and goodwill be transferred to Prudential Oil Corporation, a Delaware Corporation, as of that date in time."

3. The above resolution was adopted by the board of directors and by shareholders.

4. Vote of Shareholders:

Number of Shares Entitled to Vote	Total Voting Power of Shares Entitled to Vote	Vote Required for Adoption	Vote Favoring Adoption
120,500	95,100	80,336	95,100

5. The directors and officers of the corporation at the date of filing this certificate are as follows:

Name	Title	Residence Address
Nathan M. Shippee	Chairman of the Board; Treasurer	Brookridge Drive Greenwich, Connecticut
Edward J. Willey	Counsel	8949 Colesbury Place Fairfax, Virginia
Philip H. McLaughlin	Vice President, Secretary & Director	789 Harbor Road Southport, Connecticut
Patricia R. Morel	Assistant Secretary	251 East 51st Street New York, N.Y. 10022
Thomas L. Wilkerson	Vice President	196 East 75th Street New York, N.Y. 10021
Richard N. Funkhouser	Director	118 East 60th Street New York, N.Y.
Carleton E. Hammond	Director	8 Kerry Lane Darien, Connecticut
Fred M. Glass	Director	Wildcat Road Darien, Connecticut

'G

Robert L. Klotz	Director	16 Park Circle Conyngham, Pa.
Charles J. Kushell	Director	21 West Goethe Chicago, Illinois 60610
Michael F. Sassi	Director	210 Sixth Avenue New York, N.Y.

Dated at New York, N.Y. this 9th day of Nov., 1965.

Thomas L. Wilkerson, Vice President

Patricia R. Morel, Asst. Secretary

State of NEW YORK)
) ss.
County of MANHATTAN)

NOVEMBER 9TH, 1965

Personally appeared Thomas L. Wilkerson and Patricia R. Morel and made oath to the truth of the foregoing certificate by them signed, before me.

Notary Public

DONAL T. MACRANE
Notary Public, State of New York
No. 30-0471700
Qualified in Nassau County
Commission Expires March 30, 1967

A 321

H

SPECIAL MEETING OF THE BOARD OF
DIRECTORS OF
PRUDENTIAL OIL CORPORATION
HELD ON SEPTEMBER 8, 1965

A Special Meeting of the Board of Directors of Prudential Oil Corporation was held at the office of the Corporation, One Rockefeller Plaza, New York, New York on September 8, 1965, at 12:00 o'clock P.M., local time, pursuant to a Notice of Meeting duly sent to all directors. A copy of said Notice was directed to be filed as part of these minutes.

There were present:

Messrs. Nathan M. Shippee
Richard N. Funkhouser
Carleton E. Hammond
Philip H. McLaughlin
Gilbert M. Kiggins
Charles J. Kushell, Jr.
Robert L. Klotz

being all members of the Board.

Also attending the Meeting were Edward Willey, Esq., counsel for the Corporation, Thomas L. Wilkerson, Vice President of the Corporation and Patricia R. Morel, Assistant Secretary of the Corporation. Mr. Shippee acted as Chairman of the Meeting and Mr. McLaughlin acted as Secretary of the Meeting.

The Chairman reported to the Meeting that Mr. Gilbert M. Kiggins had submitted his resignation as a director of the Corporation,

effective immediately. There then followed a discussion by the directors whereupon said resignation was accepted with regret.

The Chairman then proposed that by reason of the vacancy created on the Board of Directors of the Corporation it was necessary to elect a new director. In this connection, he recommended that Mr. Michael F. Sassi of Chemical Bank New York Trust Company be elected to fill such vacancy. There then followed a discussion by the directors.

Upon motion duly made and seconded, it was unanimously

> RESOLVED, that Michael F. Sassi be, and he hereby is, chosen to fill the directorship left vacant by the resignation of Gilbert M. Kiggins, and to hold office until the next annual election and until his successor is duly elected and shall qualify.

The Chairman presented to the Meeting the analysis of Unit Sales in the 1965 Annual Drilling Fund, previously sent to all of the directors. The Chairman also reviewed with the directors the cash needs of the Corporation in respect of financing certain of the Units in said Drilling Fund. He then noted that plans were under way to diversify the operations of the Corporation through the organization of subsidiaries, leaving the Corporation with primarily a holding company role. In this connection, he stated that consideration would be given at a later date to the opening of a Chicago office under the supervision of Mr. Charles J. Kushell, Jr.

The Chairman then discussed with the directors the status of the Phillips Chemical Project in Puerto Rico and the present position of the Corporation with respect thereto.

The Chairman stated that the next order of business, consistent with the objective of diversification previously discussed, was to organize a subsidiary to be known as Prudential Finance Corporation and whose primary function would be to finance, on a selected basis, the purchase of Units in the Prudential Drilling Funds. There then followed a discussion by the directors.

Upon motion duly made and seconded, it was unanimously

> RESOLVED, that the proper officers of this Corporation be, and they hereby are, authorized to cause the organization of a subsidiary Corporation under the laws of the State of Delaware, said Corporation to be known as Prudential Finance Corporation, and whose primary function would be to finance the purchase of Units in the Prudential Drilling Fund programs; and further
>
> RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed to do and perform all such acts and things and to sign such documents, instruments or certificates and to take all such other action as they may deem necessary, proper or convenient to carry out the intent of the foregoing resolution.

The Chairman then stated that it would be advisable at this time to call an Annual Meeting of the Stockholders for the purpose of electing a board of directors and for such other business

as may come before said Meeting. In this connection the Chairman presented to the Meeting a copy of a proposed form of Notice of Meeting, and form of Proxy to be used in connection therewith, and directed the same be filed with the records of this Meeting as exhibits of these minutes.

Upon motion duly made and seconded, it was unanimously

RESOLVED, that an Annual Meeting of Stockholders of the Corporation be, and it hereby is called to be held at the offices of the Corporation, One Rockefeller Plaza, New York, New York on Monday, October 4, 1965, at 4:00 o'clock P.M., local time, for the following purposes:

1. To elect directors;
2. To transact such other business, if any, as may properly come before said Meeting, of any adjournment or adjournments thereof;

and further

RESOLVED, that at the close of business on September 8, 1965, be, and the same hereby is, fixed as the record date and time for the termination of the holders of Common Stock of the Corporation entitled to notice of, and to vote at said Annual Meeting of Stockholders, and all persons who are holders of Common Stock of the Corporation on such time, and on such date, shall be entitled to notice of and to vote at said Meeting; and further

RESOLVED, that Messrs. Nathan M. Shippee and Edward Willey, and each of them, be and they hereby are, appointed and authorized to act as attorneys or proxies for such Annual Meeting of Stockholders; and further

RESOLVED, that the proper officers of the Corporation be, and they hereby are authorized to appoint two persons to serve and act as Judges of Election and of Stockholders' Votes at such Annual Meeting of Stockholders or at any adjournment or adjournments thereof; and further

RESOLVED, that the following named persons be, and they hereby are, designated as the management slate to be submitted to the stockholders for election of directors at said Annual Meeting of Stockholders:

Nathan M. Shippee
Richard N. Funkhouser
Carleton E. Hammond
Robert L. Klotz
Charles J. Kushell, Jr.
Philip H. McLaughlin
Michael F. Sassi
Frederick M. Glass

and further

RESOLVED, that the form of Notice and Proxy, in the form presented to this Meeting, to be used in connection with said Annual Meeting of Stockholders be, and the same hereby are, in all respects approved and adopted; and further

RESOLVED, that the proper officers of the Corporation be, and they hereby are, directed to do and perform all such acts and things and to sign such documents and certificates and to take all such other action as they may deem necessary, appropriate or convenient to carry out the intent of the foregoing resolutions in connection with the call and holding of said Annual Meeting of Stockholders.

The Chairman stated that inasmuch as the management slate to be proposed for election at the Annual Meeting of Stockholders consisted of eight members, it would be advisable to take action,

pursuant to the By-laws of the Corporation, to increase to eight the members constituting the whole Board of Directors of the Corporation.

H

Upon motion duly made and seconded, it was unanimously

> RESOLVED, that pursuant to the By-laws of the Corporation, the number of directors which shall constitute the whole Board of Directors of this Corporation shall be and the same hereby is, established at eight (8).

There being no further business to come before the meeting, meeting adjourned.

Approved:

_____

Chairman

THE
PRUDENTIAL
DRILLING
FUNDS
DIVERSIFIED DRILLING PROGRAMS

A 327

PRUDENTIAL OIL CORPORATION • ONE ROCKEFELLER PLAZA, NEW YORK 20, N.Y. • CODE 212 JUDSON 2-3123

I

MINUTES OF DIRECTORS MEETING

OCTOBER 19, 1965

A quarterly Directors Meeting was held on October 19th at 12:15 p.m. in the Company's offices.

Attending were Messrs. N. M. Shippee, Chairman, C. J. Kushell, F. M. Glass, R. N. Funkhouser, P. H. McLaughlin. Also present were Messrs. T. L. Wilkerson, Vice President, and E. J. Willey, Counsel.

Mr. Shippee opened the meeting with a discussion of the Company's Financial Statement as of September 30, 1965, as prepared by Allen, Cassidy & Co. This was our first interim statement as a Delaware Corporation. Under Exhibit A., Investments, the date applied to our 3/32 interest in Oil Reserves should be 6-30-65 instead of 6-30-64. The Budgetary Expense Forecast for 1966 was discussed and approved.

Mr. Willey explained the 1965 drilling program in detail. He was pleased to report three field discoveries and pointed to the possibilities of drilling more wells in these areas.

He then discussed the prospects of both the Tenaka and Bastrop drillings, for which he had high hopes.

Mr. Wilkerson discussed at length and answered numerous questions on our Broker/Dealer program. He also gave a preliminary report on progress with our 1965 Year End Fund.

Mr. Shippee then turned the Board's attention to discussion of long range policy, particularly in relationship to perimeter companies. He explained that a number of possibilities had been brought to his attention and gave a number of examples of how these were investigated before being brought to the serious attention of the Board and the Executive Committee.

I

There was a short discussion relating to the present status of the proposed Prudential Financing Subsidiary. Mr. Shippee and Mr. Kushell had further areas to explore before making a report.

Mr. Fred Glass was appointed to the Executive Committee of the Board.

Lunch was served, and the meeting was adjourned at 2:30 p.m.

Respectfully submitted,

P. H. McLaughlin
Secretary

J

A 329

SPECIAL MEETING OF THE BOARD OF DIRECTORS OF
PRUDENTIAL OIL CORPORATION
HELD ON APRIL 27, 1966.

A Special Meeting of the Board of Directors of Prudential Oil Corporation was held at the office of the Corporation, One Rockefeller Plaza, New York, New York, on April 27, 1966, at 4 o'clock P.M., local time, pursuant to a Notice of Meeting duly sent to all the directors of the Corporation. A copy of said Notice was directed to be filed with the records of the Corporation as part of these minutes.

There were present:

Messrs. Nathan M. Shippee
Richard N. Funkhouser
Carleton E. Hammond
Philip H. McLaughlin
Thomas L. Wilkerson
Frederick M. Glass
Charles J. Kushell, Jr.
Michael F. Sassi

being a quorum of the Board.

Mr. Shippee acted as Chairman of the Meeting and Mr. McLaughlin acted as Secretary.

The Chairman presented to the Meeting the financial statements of the Corporation as prepared by Allen Cassidy & Co., as at March 31, 1966. The balance

BEST COPY AVAILABLE

sheet, statement of income, and the budgetary forecast as of March 31, 1966, were each reviewed.

Mr. Thomas L. Wilkerson gave a report on the present status of the 1966 Drilling Fund, particularly in respect of broker coordination. He projected sales and budgetary plans for the next two years.

The Chairman then indicated that it would be appropriate to approve the payment of a 15% cash bonus to salried employees of the Corporation as compensation for their outstanding performance during the past year. There then followed a discussion by the directors.

On motion duly made and seconded, it was unanimously

> RESOLVED, that effective immediately the proper officers of this Corporation be, and they hereby are, authorized and directed to pay a 15% cash bonus to the salaried employees of this Corporation in recognition of their outstanding performance during the past year; and it was further
>
> RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed to do and perform all such acts and things and to take all such other steps necessary, proper and convenient to carry out the intent and purpose of the foregoing resolution.

The Chairman then stated that in connection with

BEST COPY AVAILABLE

J

the sale of Units pursuant to the 1966 Annual Drilling Fund of the Corporation, the Registration Statement for which was declared effective by the Securities and Exchange Commission on February 15, 1966, it was necessary to authorize the making of application to the Commissioner of Corporations of the State of California. There then followed a discussion by the directors and, upon motion duly made and seconded, it was unanimously

> RESOLVED, that the officers of Prudential Oil Corporation are authorized to apply to the Commissioner of Corporations of the State of California for authorization to sell Units of this Corporation's 1966 Annual Drilling Fund in the State of California and upon receipt of authorization therefor to sell Units of said Fund according to the Prospectus made effective with the Securities and Exchange Commission dated February 15, 1966.

The Chairman then discussed at the Meeting the filing of two lawsuits against the Corporation. He indicated that one of the lawsuits was in the process of being settled and that the other, upon advice of counsel for the Corporation, was deemed to be completely without merit. The Chairman stated that a further report with respect to these lawsuits would be made to the directors at a later date.

J

The Chairman then reviewed with the directors the preliminary plans in respect of the project of the Corporation in Madrid, Spain; in this connection, the Chairman recommended that consideration be given to the authorization of the Madrid project. There then followed a discussion by the directors and, upon motion duly made and seconded, it was unanimously

> RESOLVED, that the proper officers of this Corporation be, and they hereby are, authorized and directed to formulate plans for the eventual development of a project in Madrid, Spain, looking towards the development of a shopping center type complex, including the development of office buildings in connection therewith; and it was further
>
> RESOLVED, that the proper officers of this Corporation be, and they hereby are, authorized and directed to do and perform all such acts and things and to sign all such documents and agreements and to take all such other steps as may be deemed necessary, proper or convenient to carry out the intent and purpose of the foregoing resolution.

The Chairman then stated that a new subsidiary corporation, known as America House, Inc., had been caused to be formed under the laws of Spain, for the purpose of administering the aforementioned real estate project, when completed. There then followed a discussion by the directors, and upon motion duly made and seconded, it was

J

unanimously

RESOLVED, that the action of the proper officers of this Corporation in causing to be formed a proposed subsidiary of the Corporation, known as America House, Inc., a Spanish corporation, be, and the same hereby is, in all respects ratified, confirmed, approved and adopted; and it was further

RESOLVED, that the action of the proper officers of this Corporation in doing and performing all acts and things and signing such documents and agreements necessary to effectuate the next preceding resolution be, and the same hereby is, in all respects ratified, confirmed, approved and adopted.

The Chairman then reported on the progress of the Petrochemical plant of Phillips Petroleum Company in Puerto Rico which he indicated is now entering its final steps after four years of preliminary work. In this connection, the Chairman indicated that the officers of the Corporation had caused to be formed a proposed subsidiary of the Corporation known as Prudential Polymer Co., under the laws of Puerto Rico, for the purpose of engaging in activities in connection with the aforementioned Phillips project. There then followed a discussion and, upon motion duly made and seconded, it was unanimously

RESOLVED, that the action of the proper officers of the Corporation in causing to be formed a new proposed subsidiary of the Corporation, known as Prudential Polymer Co., a Puerto Rican corporation, for the purpose of engaging in activities in connection with the Phillips Petrochemical plant complex being constructed in Puerto Rico be, and the same hereby is, in all respects ratified, confirmed, approved and adopted; and it was further

RESOLVED, that the proper officers of the Corporation in doing and performing all acts and things necessary to effectuate the next preceding resolution, including the execution of all such documents and agreements in respect thereof be, and the same hereby are, in all respects ratified, confirmed, approved and adopted.

The Chairman indicated that 1,000 shares of Common Stock of the Corporation had been issued and sold to Mr. Frederick M. Glass, a director of the Corporation. In this connection, he suggested that it would be appropriate to ratify the action of the officers of this Corporation in having made the sale and issuing the stock therefor. There then followed a discussion by the directors and, upon motion duly made and seconded, it was unanimously (Mr. Glass abstaining)

RESOLVED, that the action of the proper officers of this Corporation in effecting the sale on or about February 9, 1966 of 1,000 shares of this Corporation's Common Stock to Mr. Frederick M. Glass at the price of

$10 per share be, and the same hereby is, in all respects ratified, confirmed, approved and adopted; and it was further

RESOLVED, that the action of the proper officers of this Corporation in crediting to the appropriate capital stock account of the Corporation the sum of $10 for each of the 1,000 shares of Common Stock of the Corporation sold to Mr. Frederick M. Glass be, and the same hereby is, in all respects ratified, confirmed, approved and adopted.

The Chairman then stated that it would be proper for the Board to take action upon the previous action of the Stock Option Committee of the Corporation in having granted options to two employees of the Corporation. There then followed a discussion by the directors and, upon motion duly made and seconded, it was unanimously

RESOLVED, that the action of the Stock Option Committee under the Qualified Stock Option Plan of the Corporation in granting to the employees listed below the option to purchase the number of shares of Common Stock of the Corporation set forth next to their respective names at the option price of $10 per share, be and the same hereby is, in all respects ratified, confirmed, and approved

Patricia R. Morel	200 shares
Thomas L. Wilkerson	1,000 shares

; and it was further

RESOLVED, that the proper officers of this Corporation be, and they hereby are, authorized

J

and directed to execute and deliver such options to the aforesaid employees covering the designated number of shares of Common Stock of the Corporation, in the form heretofore adopted by the Board of Directors, with such change or changes therein as shall be approved by the officers executing the same, with advice of counsel, the execution of such change or changes to be conclusive evidence of such approval; and it was further

RESOLVED, that upon the acceptance of each such option by the employee to whom it was granted, the exercise thereof, the full compliance with the terms thereof and the payment of the purchase price as provided for therein, the proper officers of the Corporation be, and they hereby are, authorized and directed to cause to be issued and delivered to the employee exercising the same the number of shares of Common Stock covered thereby; and it was further

RESOLVED, that upon the issuance and delivery of any of the authorized but unissued shares of Common Stock of the Corporation in accordance with the preceding resolutions, such shares of Common Stock, and each thereof so issued and delivered, shall be deemed and is hereby declared to be fully paid and non-assessable; and it was further

RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed to do and perform all such acts and things and to sign such documents and agreements and to take all such other steps as may be necessary, proper or convenient to carry out the intent of the foregoing resolutions and fully to perform the terms and provisions of the foresaid options.

J

The Chairman then stated that consideration should be given to adopting a new name for the Corporation which would better describe the functions of the Corporation as originally planned. It was pointed out and, in this connection, that the name "Prudential Oil Corporation" is not appropriately descriptive of the activities of the Corporation. Accordingly, the Chairman requested that the directors suggest to him at the next meetings a more suitable corporate name for the Corporation.

No further business coming before the Meeting, the same was duly adjourned.

_____

Secretary

K.

PRUDENTIAL OIL CORPORATION ✓ 46 338

ONE ROCKEFELLER PLAZA NEW YORK, N. Y. 10020

MEMO: CONSIDERATIONS FOR PUBLIC ISSUE

TO: FILE

1- HISTORY OF COMPANY -- CONCEPT.

2- HISTORY OF COMPANY -- SALES.

3- HISTORY OF COMPANY -- DIVERSIFICATION.

4- HISTORY OF COMPANY --- FISCAL RECORD.

5- PROJECTION OF FUNDS -- DRILLING

a) CASH FLOW
b) RESERVES
c) STOCK COMPANIES

6- PROJECTION OF FUNDS -- CAPITAL GAINS

7- PROJECTION OF DIVERSIFICATION

8- SUMMARY:

FOR WHAT PURPOSE.

June, 1966

K

I. COMPANY CONCEPT

There are thousands of ways of making money, but there are only five ways of holding on to it, based on the regulations of a penalty-tax economy. We are fiscal agents and professional managers of funds for the employment of tax leverage, seeking capital gains income.

II. COMPANY SALES

The first five year, since 1960, were devoted to personal sales of our concept and of our product. Sales begain at $250,000 annually and grew to $2,000,000 annually during this period.

In 1965, we began a national distribution of our product, and hired a professional N.A.S.D. sales manager. Our goal was to establish national distribution through investment bankers and securities dealers within 2 years. This has been accomplished on schedule. The sales have grown from $2,000,000 to $3,000,000 to $7,500,000. The sales projection to 1970 is $10000,000; $14,000,000; $18,000,000; $20,000,000.

III. DIVERSIFICATION

With the beginning of the second five year program, we took steps to establish an "outside" Board, and to seek diversification within our

basic concept. We examined a constant flow of opportunities in capital gain opportunities, including livestock, orange groves, pecans, real estate, industrial developments, mining, and entertainment.

Our basic principle has been to share mutual interest, and to avoid financial interest. We seek to act as a catalyst, and to create an entity out of equity, sharing in the equity as our reward. To date, we have achieved a position in the development of the chemical industry in Puerto Rico, and in the development of an office building complex in Madrid, both projects being in early formative stages of establishment. We have also taken the first steps in consideration of capital gains funds in art and in colored films.

IV. FISCAL RECORD

The nature of our business, and our policy, is "low overhead." We restrict ourselves to budgeting business expense within our commission income, and to place all our equity in Capital Surplus. At the present time, we are spending about one-third our commission income on the business, and the other half is contributing to Capital Surplus at the current rate of about $2.00 per share. Our Cash Flow

has been used to establish a financing subsidiary -- Prudential Finance Corporation -- which has acted as banker for the financing of fund units on an average 30% basis.

V. PROJECTIONS -- FUNDS (DRILLING)

The sales projections of drilling funds is as follows: --

1966	--	$ 7,500,000.
1967	--	$10,000,000.
1968	--	$14,000,000.
1969	--	$18,000,000.
1970	--	$20,000,000.

This is retail. There are indications of wholesale interest, such as the management of special purpose funds for financial groups, which would be in addition to this projection.

Our range of results is from 2-3/4 to 1 up to 9 to 1. We project at 3 to 1 the above expenditures to plan the following reserves: --

YEAR	RESERVES	3/32NDS
1966	$22,500,000	$ 2,070,000
1967	$30,000,000	$ 2,810,000
1968	$42,000,000	$ 3,930,000
1969	$54,000,000	$ 5,060,000
1970	$60,000,000	$ 5,630,000
		$19,500,000.

K

EachEach five years, we project the tax-free conversion of Participants' and Agents' reserves to stock in a production company. The first was MESA in 1963. The next will be ALPHA in 1968, and again in 1973, etc. MESA was an $3,000,000 conversion. ALPHA will be about $60,000,000 conversion. We shall use these creations in the exploration for new reserves, and by association, in our future development.

VI. PROJECTION -- FUNDS (CAPITAL GAIN)

The drilling funds are the basic vehicle for tax leverage. Other investments offer capital gains opportunities. We are now researching a fund for colored films and a fund for art masterpieces. The basic concepts of diversification will be applied to each approach. We schedule a "dry-run" on the film fund this summer, to test the prospectus among our distributors. We would expect this to be a regular annual fund, if we go ahead. The art fund is a special situation based upon a Spanish Government export permit for 20 masterpieces which have been on world tour. This might not be possible of repitition, but in any event, would not be an annual fund.

K

VII. DIVERSIFICATION

The exposure to equity opportunities at the concept stage in continuous and it is a question of choice and timing. Such situations normally take two years to surface, and five years to realize. We have spent four years in Puerto Rico, and are about to realize on it. We have one year into Madrid, and it is taking form. We have our hands full at this time, and would not undertake another project until we clear the larger hurdles in Madrid, including the financing and building stage, about 1968. We would look for our next stage of diversification in 1968, at which time we might carry the Madrid "America House" concept further, to other European capital cities.

VIII. SUMMARY

The basic question to be considered in "going public" is "For What Purpose?"

We believe the purpose here is "timing." This appears to be the right time to capitalize the success of the drilling funds, with their current history of successful operations, and their projection of future growth potential.

The public issue would enhance the national position of the funds at this time and strengthen the overall position of the parent company for its activities in other areas.

K.

A 344

The organization of the parent company would appear as follows: --

Name: PRUDENTIAL EQUITIES CORPORATION

Subsidiaries: PRUDENTIAL FUNDS, INC. (PUBLIC)

PRUDENTIAL FINANCE CORP. (WHOLLY-OWNED)

PRUDENTIAL POLYMER CO.* (WHOLLY-OWNED)

AMERICA HOUSE, INC.* (WHOLLY-OWNED)

*note: Some part of Prudential Polymer Co. and America House, Inc. will be given up to others who helped create these projects, and for management of them.

NMS

6/66

A 345

INDUSTRIAL DRILLING FUNDS, INC.

Certified Copy

CERTIFICATE

OF

INCORPORATION

Organized under the laws of the

STATE OF DELAWARE

RECEIVED FOR RECORD

DEC 21 [illegible]

LEO J. DUGAN, Jr. Recorder

14.00

STATE OF DELAWARE,
NEW CASTLE COUNTY, } SS.

Recorded in the Recorder's Office at Wilmington, in INCORPORATION Record Y Vol. 86 Page 488 &c, the 21st day of Dec A. D. 1965

Witness my hand and official seal.

Leo J. Dugan Jr.

Recorder

By Louis Huberman
Deputy

BEST COPY AVAILABLE

A 346

CERTIFICATE OF INCORPORATION

OF

PRUDENTIAL DRILLING FUNDS, INC.

* * * * *

FIRST. The name of the corporation is

PRUDENTIAL DRILLING FUNDS, INC.

SECOND. Its principal office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent is The Corporation Trust Company, No. 100 West Tenth Street, Wilmington 99, Delaware.

THIRD. The nature of the business, or objects or purposes to be transacted, promoted or carried on are:

To engage in the business of managing agent, underwriter and distributor of oil and gas drilling funds.

To manufacture, purchase or otherwise acquire, invest in, own, mortgage, pledge, sell, assign and transfer or otherwise dispose of, trade, deal in and deal with goods, wares and merchandise and personal property of every class and description.

To acquire, and pay for in cash, stock or bonds of this corporation or otherwise, the good will, rights,

or any part of the obligations or liabilities of any person, firm, association or corporation.

To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, trade-marks and trade names, relating to or useful in connection with any business of this corporation.

To acquire by purchase, subscription or otherwise, and to receive, hold, own, guarantee, sell, assign, exchange, transfer, mortgage, pledge or otherwise dispose of or deal in and with any of the shares of the capital stock, or any voting trust certificates in respect of the shares of capital stock, scrip, warrants, rights, bonds, debentures, notes, trust receipts, and other securities, obligations, choses in action and evidences of indebtedness or interest issued or created by any corporations, joint stock companies, syndicates, associations, firms, trusts or persons, public or private, or by the government of the United States of America, or by any foreign government, or by any state, territory, province, municipality or other political subdivision or by any governmental agency, and as owner thereof to possess and exercise all the rights, powers and privileges of ownership, including the right to execute consents and vote thereon, and to do any and all acts and things necessary or advisable for the preservation, protection, improvement and enhancement in value thereof.

kind or description with any person, firm, association, corporation, municipality, county, state, body politic or government or colony or dependency thereof.

To borrow or raise moneys for any of the purposes of the corporation and, from time to time without limit as to amount, to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any thereof and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the corporation, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such bonds or other obligations of the corporation for its corporate purposes.

To loan to any person, firm or corporation any of its surplus funds, either with or without security.

To purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital except as otherwise permitted by law, and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

To have one or more offices, to carry on all or any of its operations and business and without restriction or limit as to amount to purchase or otherwise acquire,

hold, own, mortgage, sell, convey or otherwise dispose of, real and personal property of every class and description in any of the states, districts, territories or colonies of the United States, and in any and all foreign countries, subject to the laws of such state, district, territory, colony or country.

In general, to carry on any other business in connection with the foregoing, and to have and exercise all the powers conferred by the laws of Delaware upon corporations formed under the General Corporation Law of the State of Delaware, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

The objects and purposes specified in the foregoing clauses shall, except where otherwise expressed, be in nowise limited or restricted by reference to, or inference from, the terms of any other clause in this certificate of incorporation, but the objects and purposes specified in each of the foregoing clauses of this article shall be regarded as independent objects and purposes.

FOURTH. The total number of shares of stock which the corporation shall have authority to issue is ten thousand (10,000); all of such shares shall be without par value.

FIFTH. The minimum amount of capital with which the corporation will commence business is One Thousand Dollars ($1,000.00).

SIXTH. The names and places of residence of the incorporators are as follows:

A 350

NAMES	RESIDENCES
S. H. Livesay	Wilmington, Delaware
F. J. Obara, Jr.	Wilmington, Delaware
A. D. Grier	Wilmington, Delaware

SEVENTH. The corporation is to have perpetual existence.

EIGHTH. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

NINTH. In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make, alter or repeal the by-laws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

By resolution passed by a majority of the whole board, to designate one or more committees, each committee

to consist of two or more of the directors of the corporation, which, to the extent provided in the resolution or of the by-laws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the by-laws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding, to sell, lease or exchange all of the property and assets of the corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors shall deem expedient and for the best interests of the corporation.

THIRD. Meetings of stockholders may be held outside the State of Delaware, if the by-laws so provide. The books of the corporation may be kept (subject to any provision contained in the statutes) outside the State of

REC'Y=86 PAGE 494

Delaware at such place or places as may be designated from time to time by the board of directors or in the by-laws of the corporation. Elections of directors need not be by ballot unless the by-laws of the corporation shall so provide.

ELEVENTH. The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

WE, THE UNDERSIGNED, being each of the incorporators hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set our hands and seals this 21st day of December A.D. 1965.

S. H. Livesay (SEAL)

F. J. Chara, Jr. (SEAL)

A. D. Grier (SEAL)

REC Y-86 PAGE 495

STATE OF DELAWARE }
COUNTY OF NEW CASTLE } ss:

BE IT REMEMBERED that on this 21st day of December A.D. 1965, personally came before me, a Notary Public for the State of Delaware, S. H. Livesay, F. J. Obara, Jr. and A. D. Grier all of the parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

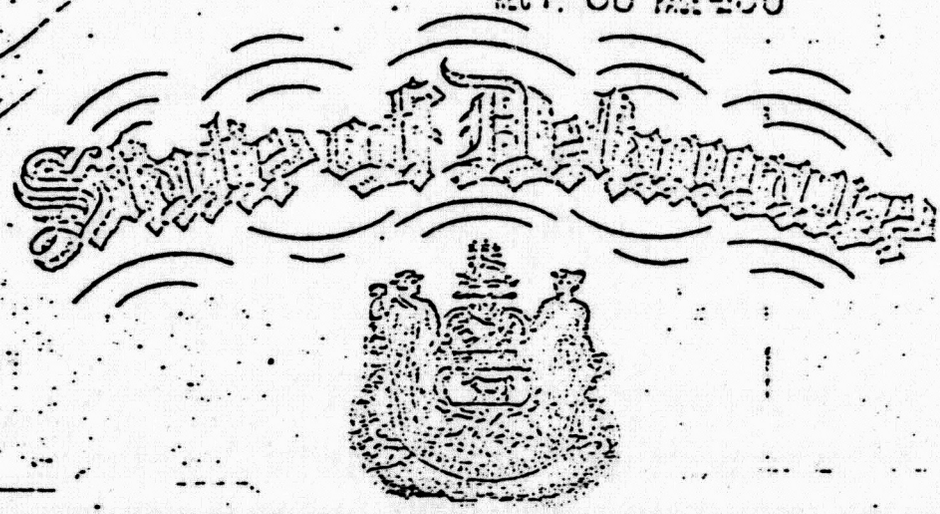
GIVEN under my hand and seal of office the day and year aforesaid.

A. Dana Atwell
Notary Public

A. DANA ATWELL
NOTARY PUBLIC
APPOINTED OCT. 29, 1965
STATE OF DELAWARE
TERM TWO YEARS

L

REC Y-86 PAGE 496



Office of Secretary of State

I, Elisha C. Dukes, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "PRUDENTIAL DRILLING FUNDS, INC.", as received and filed in this office the twenty-first day of December, A.D. 1965, at 10 o'clock A.M.

Rec for Record 12/21/65

Leo J Duggan Jr Recorder

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this twenty-first day of December in the year of our Lord one thousand nine hundred and sixty-five.

M

MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF PRUDENTIAL OIL CORPORATION HELD ON JUNE 29, 1966 A 355

A Special Meeting of the Board of Directors of PRUDENTIAL OIL CORPORATION was held at the offices of the Corporation, One Rockefeller Plaza, New York, New York, on June 29, 1966, at 12:00 o'clock P.M., local time, pursuant to a Notice of Meeting duly sent to all of the directors. A copy of said Notice was directed to be filed with the records of the Corporation as part of these minutes.

There were present:

Messrs. Nathan M. Shippee, Chairman
Philip McLaughlin, Secretary
Frederick M. Glass
Richard N. Funkhouser
Michael F. Sassi
Thomas L. Wilkerson

being a quorum of the Board.

The Secretary stated that in view of Mr. Shippee's substantial stock interest in the Corporation and his key man role in the Corporation, the proper officers of the Corporation had previously taken action on behalf of the Corporation to purchase $250,000 of life insurance on Mr. Shippee's life. In this connection, he stated that it would be well for the Board to consider increasing the amount of life insurance carried by the Corporation on Mr. Shippee's life from $250,000 to $500,000 in order to have continuity of management of the Corporation upon Mr. Shippee's death and, in such event, to provide the Corporation with funds for the purchase of the stock of the Corporation from Mr. Shippee's estate.

Thereupon, after discussion, and upon motion duly made and seconded, it was unanimously

RESOLVED, that the action of the proper officers of the Corporation in having purchased, for and on behalf of the Corporation, $250,000 life insurance on the life of Mr. Nathan M. Shippee for the purpose of providing continuity of the management of the Corporation, be, and it hereby is, ratified, confirmed and approved in all respects; and further

RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed to purchase an additional $250,000 life insurance on the life of Mr. Nathan M. Shippee, thereby increasing from $250,000 to $500,000 the total amount of life insurance so carried for the purpose of providing continuity of management of the Corporation upon Mr. Shippee's death and, in such event, to provide funds for the purchase of the stock of the Corporation from Mr. Shippee's estate; and further

RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed to do and perform all such acts and things and to sign such certificates and to take all such other action as may be deemed necessary, proper or convenient to carry out the intent of the foregoing resolution.

The Chairman then reported upon the matters discussed at the meeting of the Executive Committee of the Board of Directors held on June 9, 1966.

The Chairman then stated that it was in the best interests of the Corporation to transfer all of its assets relating to its business in the management of oil and gas drilling funds, including its fiscal agency for the Prudential Drilling Funds, to Prudential Drilling Funds, Inc. (name being changed to Prudential Funds, Inc.)

in exchange for 10,000 shares of Common Stock, without par value, of Prudential Drilling Funds, Inc. and the assumption by Prudential Drilling Funds, Inc. of the liabilities of the Corporation, but excluding the Corporation's right, title and interest in and to any business unrelated to the management of oil and gas drilling funds. The directors then discussed the matter fully.

Upon motion duly made and seconded, it was unanimously

> RESOLVED, that this Board hereby approves and authorizes, subject to the approval of stockholders, the transfer by the Corporation of all of its assets, relating to the business of the Corporation in the management of oil and gas drilling funds, including its fiscal agency for the Prudential Drilling Funds, to Prudential Drilling Funds, Inc. (name being changed to Prudential Funds, Inc.), a Delaware corporation, in exchange for 10,000 shares of Common Stock, without par value, of Prudential Drilling Funds, Inc. (representing all of its issued and outstanding stock) and the assumption by Prudential Drilling Funds, Inc. of certain of the liabilities of the Corporation; such transfer to include the assets and liabilities listed in the Balance Sheet of the Corporation at June 30, 1966; but excluding, and the Corporation retaining to itself, all of the right, title and interest of the Corporation in and to any business unrelated to the management of oil and gas drilling funds; and further
>
> RESOLVED, that the proper officers of this Corporation be, and they hereby are, authorized and directed to prepare such documents and other work which they, in their discretion, determine to be necessary or appropriate and necessary to carry out the transaction set forth in the foregoing resolution.

The Chairman then stated that it would be advisable and in the best interests of the Corporation to amend the Certificate of Incorporation of the Corporation to change its name to "Prudential Equities Corp."

There then followed a discussion by the directors of this proposal.

Upon motion duly made and seconded, it was unanimously

RESOLVED, that Article "FIRST" of the Certificate of Incorporation of the Corporation be, and it hereby is, amended to read as follows

"FIRST: The name of the Corporation shall be "PRUDENTIAL EQUITIES CORP."

The Chairman then declared that the Corporation and its predecessor, Prudential Oil Corporation, a Connecticut corporation, had engaged for a period of time extending from the Fall of 1962 in a joint venture with Phillips Petroleum Company to establish a petrochemical complex in Puerto Rico, and had contributed personnel and had paid certain expenses toward achieving the objectives of the joint venture. The Chairman declared that it had been contemplated in the past that the Corporation would undertake to promote and finance and develop petrochemical plants in Puerto Rico which might be related to or grow out of the joint venture in Puerto Rico with Phillips Petroleum Company. The Chairman declared that the name Prudential Oil Corporation was a valuable asset and that it was in the best interests of the Corporation to preserve the name.

The Chairman then declared that it would be advisable and in the best interests of the Corporation to transfer all right, title and interest in and to and all claims arising out of the aforesaid joint venture with Phillips Petroleum Company and all rights and obligations with respect to the promotion, financing and development of

petrochemical companies associated with or related to the joint venture with Phillips Petroleum Company and, upon the effectiveness of the aforementioned change of name of the corporation, the use of the corporation's name, Prudential Oil Corporation, to Prudential Oil Corporation, a New York corporation, in exchange for all of the issued and outstanding capital stock of the latter. There then followed a discussion by the Directors.

Upon motion duly made and seconded, it was unanimously

RESOLVED, that all obligations, rights and claims of the Corporation with respect to the joint venture, and with respect to the promotion, financing and development of petrochemical companies related to or associated with the joint venture with Phillips Petroleum Co. and, upon the effectiveness of the aforementioned change of name of the Corporation, the use of the name of the Corporation, Prudential Oil Corporation, be, and the same hereby are, authorized for transfer to Prudential Oil Corporation, a New York corporation, in exchange for all of the issued and outstanding capital stock of the latter corporation; said transfer to take effect at such time as the proper officers of the Corporation shall deem the same advisable and in the best interests of the Corporation; and it was further

RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed for and on behalf of the Corporation to cause to be formed a proposed new subsidiary under the name of Prudential Oil Corporation, to be incorporated under the laws of the State of New York for the purpose set forth in the next preceding resolution, and it was further

RESOLVED, that the proper officers of this Corporation, be, and they hereby are, authorized and directed, on behalf of the Corporation to perform such acts and execute such documents, upon advice of counsel, as shall be necessary or desirable to effectuate the foregoing resolutions.

The Chairman then stated that consideration was being given to having a proper subsidiary corporation formed for the purpose of possibly acting as nominee to hold title to the leasehold and other interests of the Prudential Drilling Funds. In this connection, he recommended that such a corporation be formed under the name of Prudential Land Company, Inc. There then followed a discussion by the directors.

Upon motion duly made and seconded, it was unanimously

> RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed for and on behalf of the Corporation, to cause to be formed a proposed new subsidiary, under the name of Prudential Land Company, Inc., to be incorporated under the laws of the State of New York for the purpose of possibly acting as nominee to hold title to the leasehold and other interests of the Prudential Drilling Funds; and further
>
> RESOLVED, that the proper officers of this Corporation be, and they hereby are, authorized and directed on behalf of the Corporation to perform such acts and execute such documents, upon advice of counsel, as shall be necessary or desirable to effectuate the foregoing resolution.

The Chairman then declared that it would be in order and advisable to call a Special Meeting of the Stockholders for the purposes of approving the aforementioned transaction with Prudential Drilling Funds, Inc. and the change of the name of the Corporation. In this connection, he presented to the meeting a form of Notice of Special Meeting of Stockholders and a form of proxy which was directed to be filed with these minutes.

Upon motion duly made and seconded, it was unanimously

RESOLVED, that a Special Meeting of Stockholders of this Corporation be, and it hereby is, called to be held at the offices of this Corporation, One Rockefeller Plaza, New York, New York, on July 13, 1966 at 12:00 o'clock P.M., local time, for the following purposes:

1. To consent to, approve and authorize the transfer by the Corporation of all of its assets relating to the business of the Corporation in the management of oil and gas drilling funds, including its fiscal agency for the Prudential Drilling Funds to Prudential Drilling Funds, Inc. (name being changed to Prudential Funds, Inc.), a Delaware corporation in exchange for 10,000 shares of Common Stock, without par value of Prudenital Drilling Funds, Inc. (representing all of its issued and outstanding stock) and the assumption by Prudential Drilling Funds, Inc. of certain of the liabilities of the Company, including the assets and liabilities listed in the Balance Sheet of the Corporation at June 30, 1966; but excluding, and the Corporation retaining to itself, all of the right, title and business unrelated to the management of oil and gas drilling funds.

2. To vote upon a resolution amending the Certificate of Incorporation so as to change the name of the Corporation to Prudential Equities Corp.; and

3. To transact such other business, if any, as may properly come before the meeting or any adjournment or adjournments thereof.

The Chairman then presented to the meeting the form of Notice of Meeting and proxy proposed to be issued by the Corporation to its stockholders in connection with the solicitation of proxies to be used for the Special Meeting of Stockholders being called for the aforementioned purposes. A copy of the Notice of Meeting and form of proxy was directed to be filed with the records of the Corporation as part of these minutes.

Upon motion duly made and seconded, it was unanimously

RESOLVED, that the form of Notice of Meeting and form of proxy presented to this meeting, be and the same hereby are, in all respects approved and adopted, with such change or changes therein as may be approved by the officers of this Corporation, with the advice and approval of counsel, the issuance thereof with such change or changes to be conclusive evidence of such approval; and further

RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed to give notice of said Special Meeting of Stockholders to the Stockholders of the Corporation in accordance with the provisions of the By-laws of this Corporation, the foregoing resolutions and the provisions of law applicable thereto and to do and perform all such acts and things as may be necessary or advisable duly to call and hold said Special Meeting of Stockholders in accordance therewith and to cause the Notice and the form of proxy to be mailed to the stockholders of this Corporation entitled thereto; and further

RESOLVED, that the stock transfer books of the Corporation be, and they hereby are, ordered closed at the close of business on July 6, 1966 in connection with the aforementioned Special Meeting of Stockholders for the determination of stockholders entitled to notice of and to vote at said Special Meeting of Stockholders; and further

RESOLVED, that Nathan M. Shippee and Thomas L. Wilkerson and each of them, with power of substitution to each, be, and they hereby are, appointed and authorized to act as attorneys or proxies for said Special Meeting of Stockholders; and further

RESOLVED, that Patricia R. Morel and Layman Hendrix be, and they hereby are, appointed Judges of Stockholders' Votes to serve at said Special Meeting of Stockholders; and further

RESOLVED, that the officers of this Corporation be, and they hereby are, authorized and directed to take such further action and to execute and deliver all such further instruments as they or any of them shall deem necessary, proper or convenient to carry out the intent of the foregoing resolutions.

The Chairman then noted for the record that the Board of Directors of Prudential Funds, Inc. had voted to assign $10 per share as the amount to be credited to the capital stock account of Prudential Funds, Inc., and any excess over and above said $10 per share was to be credited to the capital surplus account of Prudential Funds, Inc.

The Chairman then declared that it was advisable to increase the number of directors on the Board to twelve (12) and to this end to choose two additional directors to serve on the Board of Directors of the Corporation. The Chairman recommended Mr. Newton Minow and Mr. J. Ira Harris for such directorships. There then followed a discussion by the directors.

Upon motion duly made and sconded, it was unanimously

> RESOLVED, that pursuant to the By-laws of the Corporation, the number of directors which shall constitute the whole Board of Directors of the Corporation be and it hereby is established at twelve (12); and further
>
> RESOLVED, that pursuant to the By-laws of the Corporation, and by reason of the increase in the authorized number of directors as established in the next preceding resolution, Newton Minow and J. Ira Harris be, and they hereby are, chosen to fill such newly created directorships, and to hold office until the next annual election and until their successors are duly elected and shall qualify.

The Chairman then suggested that in view of the substantial number of matters to be considered by the Board of Directors it would be well for the Board of Directors to adjourn the meeting sine die.

m

Upon motion duly made and seconded, it was unanimously

RESOLVED, that this Special Meeting of the Board of Directors of the Corporation be, and the same hereby is, adjourned sine die.

Approved:

_____

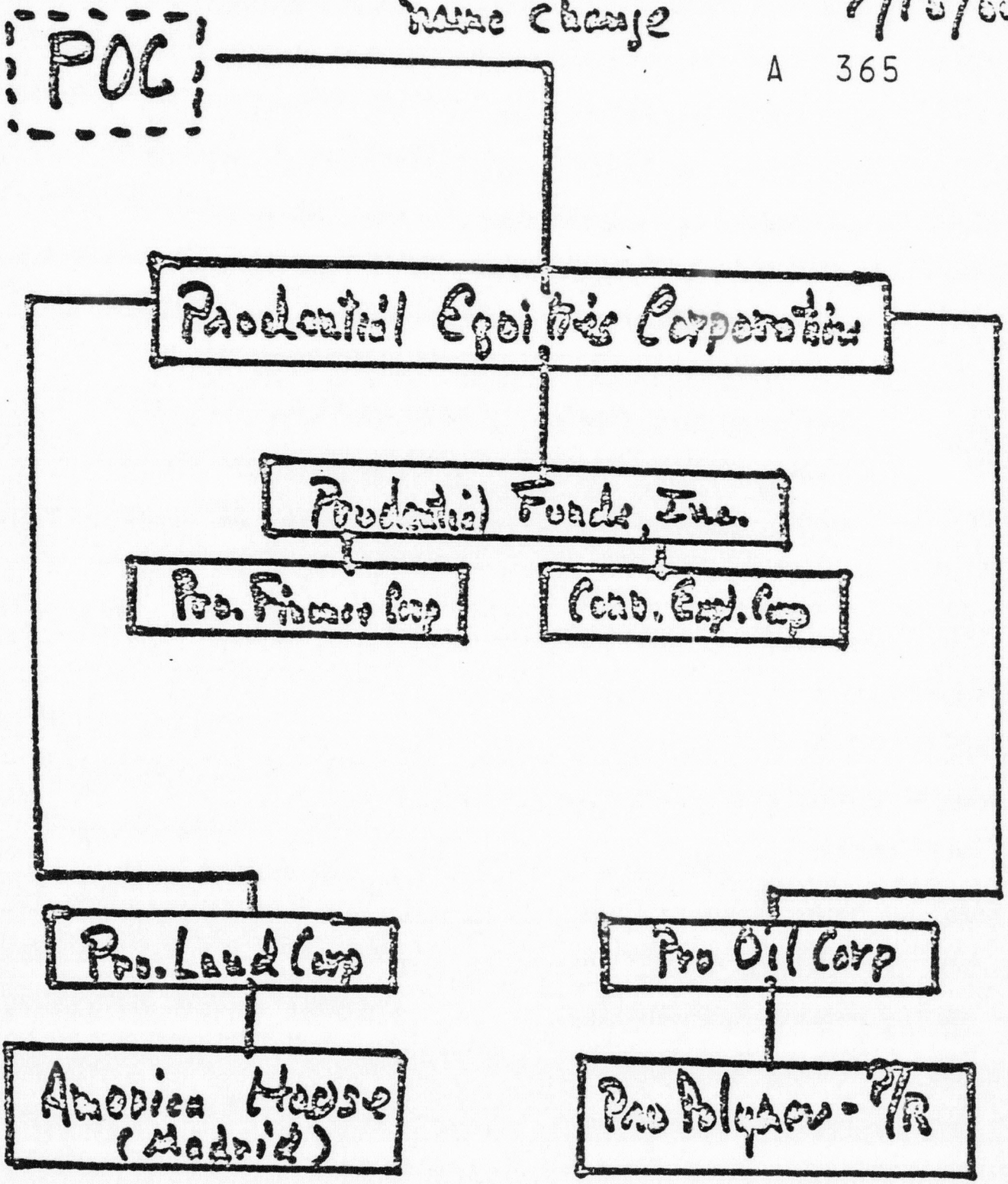
Chairman

N

Name change

7/13/66

A 365



REC'R 88 PAGE 494

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

A 366

* * * * * *

PRUDENTIAL OIL CORPORATION, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: That at a meeting of the Board of Directors of PRUDENTIAL OIL CORPORATION resolutions were duly adopted setting forth a proposed amendment to the Certificate of Incorporation of said corporation, declaring said amendment to be advisable and calling a meeting of the stockholders of said corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

> RESOLVED, that the Certificate of Incorporation of this corporation be amended by changing the Article thereof numbered "FIRST" so that, as amended said Article shall be and read as follows:
>
> "The name of the corporation is PRUDENTIAL EQUITIES CORP."

SECOND: That thereafter, pursuant to resolution of its Board of Directors, a special meeting of the stockholders of said corporation was duly called and held, at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.

THIRD: That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said PRUDENTIAL OIL CORPORATION has caused its corporate seal to be hereunto affixed and this certificate to be signed by THOMAS L. WILKERSON, its Vice-President, and PATRICIA R. MOREL, its Assistant Secretary, this 14th day of July, 1966.

PRUDENTIAL OIL CORPORATION

By _____
Vice-President

By _____
Assistant Secretary

O

REC'R 88 PAGE 496

A 368

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

BE IT REMEMBERED that on this 14th day of July, A. D. 1966, personally came before me, a Notary Public in and for the County and State aforesaid, THOMAS L. WILKERSON, Vice-President of PRUDENTIAL OIL CORPORATION, a corporation of the State of Delaware, the corporation described in and which executed the foregoing certificate, known to me personally to be such, and he, the said THOMAS L. WILKERSON as such Vice-President, duly executed said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation; that the signatures of the said Vice-President and of the Assistant Secretary of said corporation to said foregoing certificate are in the handwriting of the said Vice-President and Assistant Secretary of said corporation respectivedy, and that the seal affixed to said certificate is the common or corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

Kathryn M. McLoughlin
Notary Public

KATHRYN M. McLOUGHLIN
Qualified in Westchester County
No. 60-7860975
Notary Public, State of New York
Commission Expires March 30, 1968

RECD 88 PAGE 497

A 369

State of Delaware

Office of Secretary of State

I, Elisha C. Dukes, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of

Certificate of Amendment of Certificate of Incorporation of the "PRUDENTIAL OIL CORPORATION", as received and filed in this office the fifteenth day of July, A.D. 1966, at 10 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this fifteenth day of July in the year of our Lord one thousand nine hundred and sixty-six.

Elisha C Dukes

Secretary of State

Asst Secretary of State

REC'D FOR RECORD July 15 1966 LEO J. DUGAN, Jr. RECORDER

O

INDEXED
(PAGED)

Certified Copy

CERTIFICATE OF AMENDMENT

OF

PRUDENTIAL OIL CORPORATION

RECEIVED FOR RECORD + 5 35

JUL 15 1966

LEO J. DUGAN, Jr. Recorder

STATE OF DELAWARE,
NEW CASTLE COUNTY, } SS.

Recorded in the Recorder's Office at Wilmington, in INCORPORATION Record R Vol. 88 Page 494 &c., the 15th day of July A. D., 19 66

Witness my hand and official seal.

Leo J. Dugan Jr.

Recorder

By Louis Guberman
Deputy

P

A 371

CERTIFICATE OF INCORPORATION

OF

PRUDENTIAL OIL CORPORATION

UNDER SECTION 402 OF THE BUSINESS CORPORATION LAW

* * * * *

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED Jul 12 1966

TAX $ 10 -

FILING FEE $ 50 -

John P. Lomenzo
Secretary of State

By [illegible]

STEIN ABRAMS & ROSEN

522 FIFTH AVENUE

NEW YORK, N. Y. 1003

P

CERTIFICATE OF INCORPORATION

A 372

OF

PRUDENTIAL OIL CORPORATION

UNDER SECTION 402 OF THE BUSINESS CORPORATION LAW

* * * * *

THE UNDERSIGNED, being of the age of twenty-one years or over, for the purpose of forming a corporation pursuant to Section 402 of the Business Corporation Law of New York, does hereby certify:

FIRST: The name of the corporation is

PRUDENTIAL OIL CORPORATION

SECOND: The purposes for which it is formed are:

To produce, acquire, use, develop, work, prepare, treat, handle, dispose of, transport, hold, warehouse, store, sell, consign, distribute and generally deal in and with all sorts of manufactured goods, chemicals, and natural, artificial or synthetic substances and any products made therefrom and by-products, components, elements, raw materials, ingredients, derivatives, machinery, equipment, or facilities related thereto or useful in connection therewith.

To purchase, take, lease as lessee or otherwise acquire, to own, use, improve and maintain, and to sell, convey, mortgage, pledge, lease as lessor and otherwise dispose of oil, gas and mineral lands, lands and real estate of all kinds, and the oil gas and mineral rights and interests in lands; to produce therefrom oil, gas, minerals, elements, deposits and substances of all kinds including solids, liquids and gases and to develop and exploit said lands, rights and interests; to develop such lands, rights and interests by, and to enter into and execute contracts for the drilling of wells and the

P

A 373

installation of plants, machinery and equipment, and to dispose of the products therefrom either as a raw product or otherwise; to refine and reduce said products, to prepare said products for market and to manufacture from said products any and all marketable commodities.

To search, prospect and explore for petroleum and other oils, gas and any other useful or valuable substances or products; to drill for, remove, produce, acquire by purchase or otherwise, own, use, store, transport, refine, distill, manufacture, process, prepare for market, sell and otherwise dispose of petroleum and other oils, bitumens, bituminous substances of all kinds, vegetable substances, minerals and gases and all products, by-products and residual products thereof or therefrom; to drill, purchase, take, lease as lessee and otherwise acquire, to own, use, maintain, develop, improve and operate, and to sell, convey, mortgage, pledge, lease as lessor and otherwise dispose of oil, gas and other wells and any articles, materials, machinery, equipment, structures or property used therefor or in connection therewith; and to engage in any trades, businesses and occupations necessary or convenient in connection with any business of the corporation or incidental, related or contributory thereto.

To build, purchase, take, lease as lessee or otherwise acquire, to own, use, maintain, improve and operate, and to sell, convey, mortgage, pledge, lease as lessor and otherwise dispose of or encumber, wells, refineries, stations, tanks, tank cars, ~~pipexlinesxxxgasxxxxlxxx~~ conduits, equipment, facilities and properties of all kinds for manufacturing, treating, processing, preparing, concentrating, distilling, purifying, generating, producing, using, storing, handling, transporting, distributing, and in any manner dealing in and with, petroleum and other oils, gas and other volatile substances, vegetable substances, minerals, asphalt, bitumen and bituminous substances and other similar products or every kind and character for any and all purposes whatsoever, but not to sell gas to consumers.

To manufacture, process, purchase or otherwise acquire, invest in, own, mortgage, pledge, sell, assign and transfer or otherwise dipose of, trade, deal in and deal with goods, wares and merchandise and personal property of every kind, nature, class and description, and to engage and participate in any mercantile, industrial, general contracting or trading business of any kind or character whatsoever.

P

To engage generally in the real estate business, as principal, agent, broker, or in any other lawful capacity and generally to take, lease, purchase or otherwise acquire, and to own, use, hold, sell, convey, exchange, lease, mortgage, work, clear, improve, develop, divide, and otherwise handle, manage, operate, deal in and dispose of real estate, real property, lands, houses, buildings or other works and any interest or right therein; and take, lease, purchase or otherwise acquire, and to own, use, hold, sell, convey, exchange, hire, lease, pledge, mortgage, and otherwise handle, and deal in and dispose of such personal property, chattels, chattels real, rights, easements, privileges, choses in action, notes, bonds, mortgages, and securities as may lawfully be acquired, held, or disposed of.

To acquire, by purchase or otherwise, hold, own, develop, improve, lease, sell, mortgage, convey, exchange, trade in, rent and/or dispose of real property, improved and unimproved, or any estate, interest or right therein.

To erect, construct, maintain, improve, rebuild, enlarge, alter, manage, and control, directly or through ownership of stock in any corporation, any and all kinds of buildings, houses, stores, offices, shops, warehouses, factories, mills, machinery, and plants, and any and all other structures and erections which may, in the judgment of the Board of Directors, at any time be necessary, useful, or advantageous, for the purposes of the Corporation, and which can lawfully be done.

To make, enter into, perform and carry out contracts for constructing, building, altering, improving, repairing, decorating, maintaining, purchasing and fitting up buildings, plants, tenements, and structures of every description, and to advance money to and enter into agreements of all kinds with builders, contractors, property owners, and others, for said purposes.

To apply for, register, obtain, purchase, lease, take licenses in respect of or otherwise acquire, and to hold, own, use, operate, develop, enjoy, turn to account, grant licenses and immunities in respect of, manufacture under and to introduce, sell, assign, mortgage, pledge or otherwise dispose of, and in any manner deal with and contract with reference to:

P

(a) inventions, devices, formulae, processes and any improvements and modifications thereof;

(b) letters patent, patent rights, patented processes, copyrights, designs, and similar rights, trademarks, trade symbols and other indications of origin and ownership granted by or recognized under the laws of the United States of America or of any state or subdivision thereof, or of any foreign country or subdivision thereof, and all rights connected therewith or appertaining thereunto; and

(c) franchises, licenses, grants and concessions.

To make, enter into, perform and carry out contracts of every kind and description with any person, firm, association, corporation or government or subdivision thereof.

To acquire by purchase, exchange or otherwise, all, or any part of, or any interest in, the properties, assets, business and good will of any one or more persons, firms, associations or corporations heretofore or hereafter engaged in any business for which a corporation may now or hereafter be organized under the laws of the State of New York; to pay for the same in cash, property or its own or other securities; to hold, operate, reorganize, liquidate, sell or in any manner dispose of the whole or any part thereof; and in connection therewith, to assume or guarantee performance of any liabilities, obligations or contracts of such persons, firms, associations or corporations, and to conduct the whole or any part of any business thus acquired.

To lend its uninvested funds from time to time to such extent, to such persons, firms, associations, corporations, governments or subdivisions thereof, and on such terms and on such security, if any, as the Board of Directors of the Corporation may determine.

To have and exercise all the powers conferred by the laws of the State of New York upon corporations formed under the act hereinbefore referred to, and to do any or all things hereinbefore set forth to the same extent as natural persons might or could do.

P

A 376

The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of specifc powers shall not be held to limit or restrict in any manner the powers of this Corporation.

THIRD: The office of the Corporation is to be located in the City of New York, County of New York, State of New York.

FOURTH: The aggregate number of shares which the Corporation shall have authority to issue is Twenty Thousand (20,000) of the par value of One Dollar ($1.00) each.

FIFTH: The Secretary of State is designated as the agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

c/o The Corporation Trust Company
277 Park Avenue
New York, New York 10017

SIXTH: The name and address of the registered agent of the Corporation upon whom process against it may be served are:

The Corporation Trust Company
277 Park Avenue
New York, New York 10017

P

A 377

IN WITNESS WHEREOF, I have made, signed and acknowledged this certificate this 11th day of July, 1966 and I affirm the statements contained therein as true under penalties of perjury.

Nathan M. Shippee

One Rockefeller Plaza
New York, New York 10020

P

A 378

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

On this 11th day of July, 1966, before me personally came NATHAN M. SHIPPEE, to me known, and known to me to be the person described in and who executed the foregoing certificate, and he duly acknowledged to me that he had executed the same.

Patricia L. Bond

15472

State of New York
DEPARTMENT OF STATE } ss.:

I CERTIFY That I have compared the preceding copy with the original Certificate of Incorporation of

PRUDENTIAL OIL CORPORATION,

filed in this department on the 12th day of July, 1966, and that such copy is a correct transcript therefrom and of the whole of such original.

Witness my hand and the official seal of the Department of State at the City of Albany, this twelfth day of July, one thousand nine hundred sixty-six.

John P. Lomenzo
Secretary of State

Form CO-504

P

A. 379

CERTIFICATE OF RESERVATION 1373

STATE OF NEW YORK
DEPARTMENT OF STATE } ss.:

I DO HEREBY CERTIFY, That the name

PRUDENTIAL OIL CORPORATION,

for a corporation has been reserved for the use of

STEIN, ABRAMS & ROSEN,

for a period of sixty days from the date hereof, for the creation of a domestic corporation.

Given under my hand and the official seal of the Department of State at the City of Albany, this fifteenth day of June, 1966

John P. Lomenzo

Secretary of State

Certificate of reservation must accompany Certificate of Incorporation or Application of Authority when presented for filing.

CO-530(11/64)

Q

A. 380

56856-1

CERTIFICATE OF INCORPORATION

OF

PRUDENTIAL LAND COMPANY, INC.

UNDER SECTION 402 OF THE BUSINESS CORPORATION LAW

* * * * *

THE UNDERSIGNED, being of the age of twenty-one years or over, for the purpose of forming a corporation pursuant to Section 402 of the Business Corporation Law of New York, does hereby certify:

FIRST: The name of the corporation is

PRUDENTIAL LAND COMPANY, INC.

SECOND: The purposes for which it is formed are:

To engage generally in the real estate business, as principal, agent, broker, or in any other lawful capacity and generally to take, lease, purchase or otherwise acquire, and to own, use, hold, sell, convey, exchange, lease, mortgage, work, clear, improve, develop, divide, and otherwise handle, manage, operate, deal in and dispose of real estate, real property, lands, houses, buildings or other works and any interest or right therein; and take, lease, purchase or otherwise acquire, and to own, use, hold, sell, convey, exchange, hire, lease, pledge, mortgage, and otherwise handle, and deal in and dispose of such personal property, chattels, chattels real, rights, easements, privileges, choses in action, notes, bonds, mortgages, and securities as may lawfully be acquired, held, or disposed of.

To acquire, by purchase or otherwise, hold, own, develop, improve, lease, sell, mortgage, convey, exchange, trade in, rent and/or dispose of real property, improved and unimproved, or any estate, interest or right therein.

To erect, construct, maintain, improve, rebuild, enlarge, alter, manage, and control, directly or through ownership of stock in any corporation, any and all kinds of buildings, houses, stores, offices, shops, warehouses, factories, mills, machinery, and plants, and any and all other structures and erections which may, in the judgment of the Board of Directors, at any time be necessary, useful, or advantageous, for the purposes of the Corporation, and which can lawfully be done.

To make, enter into, perform and carry out contracts for constructing, building, altering, improving, repairing, decorating, maintaining, purchasing and fitting up buildings, plants, tenements, and structures of every description, and to advance money to and enter into agreements of all kinds with builders, contractors, property owners, and others, for said purposes.

To apply for, register, obtain, purchase, lease, take licenses in respect of or otherwise acquire, and to hold, own, use, operate, develop, enjoy, turn to account, grant licenses and immunities in respect of, manufacture under and to introduce, sell, assign, mortgage, pledge or otherwise dispose of, and in any manner deal with and contract with reference to:

(a) inventions, devices, formulae, processes and any improvements and modifications thereof;

(b) letters patent, patent rights, patented processes, copyrights, designs, and similar rights, trademarks, trade symbols and other indications of origin and ownership granted by or recognized under the laws of the United States of America or of any state or subdivision thereof, or of any foreign country or subdivision thereof, and all rights connected therewith or appertaining thereunto; and

(c) franchises, licenses, grants and concessions.

To produce, acquire, use, develop, work, prepare, treat, handle, dispose of, transport, hold, warehouse, store, sell, consign, distribute and generally deal in and with all sorts of manufactured goods, chemicals, and natural, artificial or synthetic substances and any products made therefrom and by-products, components, elements, raw materials, ingredients, derivatives, machinery, equipment, or facilities related thereto or useful in connection therewith.

Q

A 382

To purchase, take, lease as lessee or otherwise acquire, to own, use, improve and maintain, and to sell, convey, mortgage, pledge, lease as lessor and otherwise dispose of oil, gas and mineral lands, lands and real estate of all kinds, and the oil gas and mineral rights and interests in lands; to produce therefrom oil, gas, minerals, elements, deposits and substances of all kinds including solids, liquids and gases and to develop and exploit said lands, rights and interests; to develop such lands, rights and interests by, and to enter into and execute contracts for the drilling of wells and the installation of plants, machinery and equipment, and to dispose of the products therefrom either as a raw product or otherwise; to refine and reduce said products, to prepare said products for market and to manufacture from said products any and all marketable commodities.

To search, prospect and explore for petroleum and other oils, gas and any other useful or valuable substances or products; to drill for, remove, produce, acquire by purchase or otherwise, own, use, store, transport, refine, distill, manufacture, process, prepare for market, sell and otherwise dispose of petroleum and other oils, bitumens, bituminous substances of all kinds, vegetable substances, minerals and gases and all products, by-products and residual products thereof or therefrom; to drill, purchase, take, lease as lessee and otherwise acquire, to own, use, maintain, develop, improve and operate, and to sell, convey, mortgage, pledge, lease as lessor and otherwise dispose of oil, gas and other wells and any articles, materials, machinery, equipment, structures or property used therefor or in connection therewith; and to engage in any trades, businesses and occupations necessary or convenient in connection with any business of the corporation or incidental, related or contributory thereto.

To build, purchase, take, lease as lessee or otherwise acquire, to own, use, maintain, improve and operate, and to sell, convey, mortgage, pledge, lease as lessor and otherwise dispose of or encumber, wells, refineries, stations, tanks, tank cars, pipe lines, gas mains, conduits, equipment, facilities and properties of all kinds for manufacturing, treating, processing, preparing, concentrating, distilling, purifying, generating, producing, using, storing, handling, transporting, distributing, and in any manner dealing in and with, petroleum and other

oils, gas and other volatile substances, vegetable substances, minerals, asphalt, bitumen and bituminous substances and other similar products or every kind and character for any and all purposes whatsoever.

To manufacture, process, purchase or otherwise acquire, invest in, own, mortgage, pledge, sell, assign and transfer or otherwise dispose of, trade, deal in and deal with goods, wares and merchandise and personal property of every kind, nature, class and description, and to engage and participate in any mercantile, industrial, general contracting or trading business of any kind or character whatsoever.

To make, enter into, perform and carry out contracts of every kind and description with any person, firm, association, corporation or government or subdivision thereof.

To acquire by purchase, exchange or otherwise, all, or any part of, or any interest in, the properties, assets, business and good will of any one or more persons, firms, associations or corporations heretofore or hereafter engaged in any business for which a corporation may now or hereafter be organized under the laws of the State of New York; to pay for the same in cash, property or its own or other securities; to hold, operate, reorganize, liquidate, sell or in any manner dispose of the whole or any part thereof; and in connection therewith, to assume or guarantee performance of any liabilities, obligations or contracts of such persons, firms, associations or corporations, and to conduct the whole or any part of any business thus acquired.

To lend its uninvested funds from time to time to such extent, to such persons, firms, associations, corporations, governments or subdivisions thereof, and on such terms and on such security, if any, as the Board of Directors of the Corporation may determine.

To have and exercise all the powers conferred by the laws of the State of New York upon corporations formed under the act hereinbefore referred to, and to do any or all things hereinbefore set forth to the same extent as natural persons might or could do.

The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that

the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this Corporation.

THIRD: The office of the Corporation is to be located in the City of New York, County of New York, State of New York.

FOURTH: The aggregate number of shares which the Corporation shall have authority to issue is Twenty Thousand (20,000) of the par value of One Dollar ($1.00) each.

FIFTH: The Secretary of State is designated as the agent of the Corporation upon whom process against the Corporation may be served. The pose office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

c/o The Corporation Trust Company
277 Park Avenue
New York, New York 10017

SIXTH: The name and address of the registered agent of the Corporation upon whom process against it may be served are:

The Corporation Trust Company
277 Park Avenue
New York, New York 10017

Q

A 385

IN WITNESS WHEREOF, I have made, signed and acknowledged this certificate this 11th day of July, 1966 and I affirm the statements contained therein as true under penalties of perjury.

Nathan M. Shippee

One Rockefeller Plaza
New York, New York 10020

BEST COPY AVAILABLE

Q

A 386

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

On this 11th day of July, 1966, before me personally came NATHAN M. SHIPPEE, to me known, and known to me to be the person described in and who executed the foregoing certificate, and he duly acknowledged to me that he had executed the same.

Patricia L. Morel

PATRICIA R. MOREL
Notary Public, State of New York
No. 31-8011985
Qualified in New York County
Commission Expires March 30, 1968

1

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

BEFORE PAYMENT OF CAPITAL

OF

PRUDENTIAL DRILLING FUNDS, INC.

R

A 387

We, the undersigned, being all of the duly qualified directors of PRUDENTIAL DRILLING FUNDS, INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DO HEREBY CERTIFY:

FIRST: That Article FIRST of the Certificate of Incorporation be and it hereby is amended to read as follows:

FIRST: The name of the corporation shall be PRUDENTIAL FUNDS, INC.

SECOND: That no part of the capital of said Corporation has been paid.

IN WITNESS WHEREOF, we have signed this Certificate this 29th day of June, 1966.

L.S. L.S.

L.S. L.S.

L.S. L.S.

L.S. L.S.

L.S. L.S.

R

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

A - 388

BE IT REMEMBERED that on this 29th day of June, 1966, personally came before me a Notary Public for the State of New York, Michael F. Sassi, Richard N. Funkhouser, Frederick M. Glass, Nathan M. Shippee, Charles J. Kushell, Jr., Robert L. Klotz, James C. Butt, Philip H. McLaughlin, Thomas L. Wilkerson, J. Ira Harris, Newton N. Minow, Carleton E. Hammond, being all of the directors of the foregoing corporation, known to me personally to be such and severally acknowledged the said amended certificate to be the act and deed of the signers respectively, and that the facts therein stated are truly set forth.

GIVEN under my hand and seal of office the day and year aforesaid.

Patricia R. Morel
Notary Public

PATRICIA R. MOREL
NOTARY PUBLIC
STATE OF NEW YORK

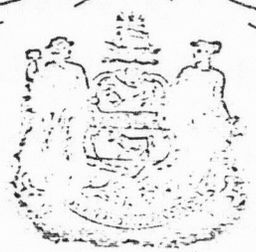
PATRICIA R. MOREL
Notary Public, State of New York
No. 31-6011985
Qualified in New York County
Commission Expires March 30, 1968

(Seal)

R

A. 389

State of Delaware



Office of Secretary of State

I, Elisha C. Dukes, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Amendment Before Payment of Capital of the "PRUDENTIAL DRILLING FUNDS, INC.", as received and filed in this office the fifth day of August, A.D. 1966, at 10 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this fifth day of August in the year of our Lord one thousand nine hundred and sixty-six.

Elisha C Dukes

Secretary of State

S

LAW OFFICES

BURTON M. ABRAMS

630 FIFTH AVENUE, NEW YORK, N.Y. 10020

A. 390

TELEPHONE NUMBER
212-265-3350

BURTON M. ABRAMS
ARNOLD M. SHEIDLOWER

DANIEL EISENBERG
OF COUNSEL

October 16, 1968

Prudential Funds, Inc.

Dear Sirs:

On behalf of Prudential Funds, Inc., we are delivering to you herewith for filing under the Securities Act of 1933, as amended, the following documents in respect of the registration of 250,000 shares of Common stock, par value $.10 per share, of Prudential Funds, Inc.:-

1. One signed and two conformed copies of the Registration Statement on Form S-1, including Exhibits.

2. Five copies of the form of Prospectus and five copies of the Cross Reference Sheet pursuant to Rule 424(a).

3. Certified check in the amount of $500.00 in payment of the registration fee.

We are also delivering six extra copies of the Registration Statement and six extra copies of the form of Prospectus. In addition, three additional sets of Exhibits are enclosed for the convenience of the staff.

Very truly yours,

Arnold M. Sheidlower

AMS:mg
Enclosure

Securities and Exchange Commission
Division of Corporation Finance
500 North Capitol Street
Washington, D. C. 20549

OFFICE COPY A 391

PROSPECTUS

350,000 Shares

Prudential Funds, Inc.

Common Stock

($.10 Par Value)

Prior to this offering, there has been no market for the Common Stock of the Company. Accordingly, the public offering price of the shares offered hereby was determined by negotiations between the Company and the Managing Underwriter.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Price to Public	Underwriting Discounts and Commissions (1)	Proceeds to Company (2)
Per Share	$11.00	$.90	$10.10
Total	$3,850,000	$315,000	$3,535,000

(1) In the Underwriting Agreement, the Company has agreed to indemnify the several Underwriters against certain civil liabilities, including liabilities under the Securities Act of 1933, as amended.

(2) Before deducting expenses of the offering estimated at $125,000.

The Underwriters may offer, at the initial public offering price, not in excess of 35,000 shares being offered by this Prospectus to certain employees, including officers of the Company, and business associates of the Company. The number of shares available to the general public will be reduced to the extent that such persons purchase such reserved shares.

The Common Stock is offered by the several Underwriters named herein when, as and if issued, delivered and accepted by the Underwriters, subject to the approval of their counsel as to certain legal matters, to prior sale and to certain other conditions. It is expected that delivery of certificates for such shares, in definitive form, will be made on or about December 23, 1968 in Chicago, Illinois.

Bacon, Whipple & Co.

The date of this Prospectus is December 13, 1968.

A 392

No dealer, salesman or any other person has been authorized to give any information or to make any representations other than those contained in this Prospectus in connection with the offer contained in this Prospectus and, if given or made, such information or representations must not be relied upon as having been authorized by Prudential Funds, Inc. or by any of the Underwriters. Neither the delivery of this Prospectus nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of Prudential Funds, Inc. since the date hereof. This Prospectus does not constitute an offer or solicitation by anyone in any state in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

TABLE OF CONTENTS

	Page
The Company	3
Capitalization	4
Use of Proceeds	5
Statement of Income (Loss)	6
Supplemental Information to Statement of Income (Loss)	8
Business and Property	8
Public Programs	8
Private Drilling Ventures	12
Future Programs	13
Prufin Corporation	13
Oil and Gas Interests	14
Reserves	16
Competition and Regulation	17
Leases	17
Employees	18
Recent Developments	18
Management	19
Remuneration	20
Principal Holders	21
Interest of Management and Others in Certain Transactions	22
Prufin Corporation	22
Other Transactions	22
Description of Common Stock	23
Non-Cumulative Voting	23
Dividends	24
Transfer Agents and Registrars	24
Reports to Stockholders	24
Litigation	24
Underwriting	25
Legal Opinions	26
Experts	26
Additional Information	26
Reports of Independent Certified Public Accountants	27
Financial Statements	28

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE COMMON STOCK OF THE COMPANY AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

T

A 393

THE COMPANY

Prudential Funds, Inc. (the "Company") was incorporated in Delaware on December 21, 1965, under the name of Prudential Drilling Funds, Inc., and effective July 1, 1966, it took over the oil and gas management business of Prudential Oil Corporation, which was originally organized in Connecticut in 1959 and reorganized under the same management as a Delaware corporation on March 1, 1965. Prudential Oil Corporation subsequently effected a change in its name to Prudential Equities Corp., and is deemed the "parent" of Prudential Funds, Inc., by reason of its ownership of all of the shares of Common Stock of Prudential Funds, Inc. issued and outstanding at the date of this Prospectus. See "Principal Holders" herein.

The Company maintains its principal office at 90 Broad Street, New York City, New York, and has recently opened branch offices in Dallas, Texas and Denver, Colorado.

Since 1960, the Company and its predecessor have publicly offered Unit participations in and administered oil and gas exploration and development programs, known as the Prudential Drilling Fund Programs (the "Programs"), which provide facilities for co-ownership and participation by individuals in high income tax brackets (the "participants") in a number of oil and gas drilling ventures and for the administration, supervision and accounting for expenditures and income of such participants. The Company, in administering the Programs, acts as Agent for the participants in the acquisition, testing, development and operation of oil and gas leases and leasehold interests and administers, supervises and accounts to participants in the Programs for their investments, leasehold interests and income. See "Business and Property" herein. Since 1967, the Company has also acted as Agent for the management and administration of separate Private Drilling Ventures on behalf of a limited number of participants (ranging from one to seven persons) which are operated under terms and conditions comparable to the Programs. See "Private Drilling Ventures" herein.

The Company has two wholly owned subsidiaries, Connecticut Exploration Corporation, a Connecticut corporation, which holds title to certain Canadian leasehold interests and properties as nominee for participants in the Programs and Prufin Corporation, a Delaware corporation, which is engaged in financing, on a selective basis, of Unit participations in the Programs. See "Prufin Corporation" herein.

The Company owns interests in oil and gas properties, which have been acquired from time to time through the purchase of Unit participations in certain of the Programs for its own account and by purchase from others. In addition, the Company has received overriding royalty interests in the properties acquired for the Programs as compensation for its administration and management of the Programs. See "Oil and Gas Interests" herein for information concerning these interests.

At the present time, 100% of the Common Stock of the Company is owned by Prudential Equities Corp., and after the sale of the shares offered hereby Prudential Equities Corp. will own 80% of such Common Stock. The book value of the shares of Common Stock owned by Prudential Equities Corp. as of September 30, 1968 was approximately 43¢ per share, based upon 1,400,000 shares of Common Stock of the Company outstanding after giving effect to the recapitalizations referred to under "Capitalization" herein. Upon the sale of the 350,000 shares of Common Stock offered hereby, each share of Common Stock will have a book value of approximately $2.30 per share, the increase of approximately $1.87 per share in the hands of the existing stockholder resulting from the immediate dilution of $8.70 per share from the public offering price.

CAPITALIZATION

The following table sets forth the capital structure of the Company and its subsidiaries as of November 30, 1968, and has been adjusted to give effect to the recapitalizations referred to in Note (4) below and the offering and sale of 350,000 shares of the Common Stock of the Company offered hereby, as well as the application of a part of the net proceeds of the offering to retirement of indebtedness:

Description	Authorized	Outstanding	To Be Outstanding
Short Term Debt to Banks(1)	—	$1,184,977	—
6% Demand Note to Prudential Equities Corp.(2)	$ 85,958	$ 64,670	—
Long Term Debt:			
7% Promissory Note due December, 1970 to The Fort Worth National Bank (including current portion)(3)	$230,430	$ 126,986	—
Common Stock, $.10 par value(4)	5,000,000 shs.	1,400,000 shs.	1,750,000 shs.

(1) The interest rates on this indebtedness range from 7% to 8½% per annum. See Note 5 of the Notes to Financial Statements. Under arrangements with banks heretofore and currently in effect, the Company has renewed a substantial portion of its short-term indebtedness periodically. To the extent renewed, such indebtedness might be deemed to be in the nature of long-term indebtedness.

The Company intends to continue to use bank sources for long-term financing and is presently negotiating to borrow approximately $1,000,000, prior to the end of the present calendar year, the proceeds of which will be principally advanced to its subsidiary, Prufin Corporation, for the purpose of financing Unit participations and development costs in the 1967 and 1968 Drilling Programs, which amount is not proposed to be repaid from the proceeds of this offering. See "Prufin Corporation" herein.

(2) See Note 1 of the Notes to Financial Statements for additional information.

(3) See Notes 3 and 5 of the Notes to Financial Statements for additional information.

(4) On September 3, 1968, the Company effected an amendment to its Certificate of Incorporation changing the number of authorized shares of Common Stock from 10,000 shares, without par value, to 5,000,000 shares, $.10 par value. In connection therewith, the 10,000 shares of Common Stock, without par value, of the Company then outstanding became 1,000,000 shares of Common Stock, $.10 par value, which shares were further reclassified on November 6, 1968 to an aggregate of 1,400,000 outstanding shares of Common Stock, $.10 par value.

(5) See "Leases" herein for information concerning the extent of the Company's obligations under leases on real property.

USE OF PROCEEDS

The net proceeds to be received by the Company from the sale of the 350,000 shares of Common Stock offered hereby are estimated at $3,410,000 after payment of expenses. Approximately $1,325,000 of the net proceeds will be used to repay indebtedness, of which approximately $1,055,000 represents bank indebtedness incurred by the Company for the purpose of making advances to Prufin Corporation, now a subsidiary of the Company (to enable that corporation to finance others in connection with the purchase of Unit participations in the various Programs), and approximately $270,000 represents short term indebtedness to banks incurred in connection with the purchase by the Company of certain oil and gas properties. (See "Recent Developments" herein). In addition, approximately $1,060,000 due to the Programs, of which approximately $760,000 is payable by Prufin Corporation (which sum will be advanced by the Company to Prufin Corporation) in connection with its financing of development of participants' oil and gas property interests in the 1966 and 1967 Drilling Programs and the balance of approximately $300,000 is payable by the Company for its own purchases of Unit participations and development of the Company's oil and gas property interests, will also be paid from the net proceeds of the offering. See Note (1) to the table under "Capitalization" herein for a description of pending negotiations to borrow additional funds. The amount of $64,670 of the net proceeds will be used to repay the Company's parent, Prudential Equities Corp., which amount represents the balance of the original cost of the purchase, at book value, of the capital stock of Prufin Corporation. See "Interest of Management and Others in Certain Transactions" herein. Moreover, $100,000 of the net proceeds will be employed by the Company to purchase Unit participations in the Company's 1969 Annual Drilling Program. It is anticipated that the balance of the proceeds will be employed for future development of the Company's oil and gas properties as well as for the purchase of additional Unit participations in Programs administered and managed by the Company and for other general corporate purposes.

It should be noted that the Company may from time to time borrow additional funds to finance its activities, including the activities of Prufin Corporation.

PRUDENTIAL FUNDS, INC.

STATEMENT OF INCOME (LOSS)

The following statement of income (loss) as it relates to the three years ended June 30, 1966 has been examined by Allen, Cassidy & Co., independent certified public accountants, whose opinion thereon appears elsewhere in this Prospectus. As related to the two years ended June 30, 1968, and the three months ended September 30, 1968, it has been examined by Peat, Marwick, Mitchell & Co., independent certified public accountants, whose opinion thereon appears elsewhere in this Prospectus. In the opinion of management, the unaudited statement for the three months ended September 30, 1967 includes all adjustments, consisting only of normal recurring accruals, necessary for a fair statement of the results of operations for such period. This statement should be read in conjunction with the financial statements and the related notes included elsewhere herein.

	Year Ended June 30,					Three Months Ended September 30,	
	1964	1965	1966	1967	1968	1967 (Unaudited)	1968 (note B)
GROSS INCOME:							
Commission income (note 4)	$106,051	$144,530	$274,889	$637,513	$1,309,980	$182,050	$378,551
Overriding royalty income (note 3)	22,195	28,023	45,616	152,085	317,423	59,912	91,042
Income from Drilling Fund Units, net of operating expenses	—	212	5,702	16,075	38,480	5,455	15,184
Income from oil and gas properties	—	—	—	—	—	—	37,538
Interest income	—	572	7,678	29,381	80,127	15,353	28,844
Total gross income	128,246	173,337	333,885	835,054	1,746,010	262,770	551,159
COSTS AND EXPENSES:							
Brokers' commissions (note 4)	35,000	21,170	151,196	285,143	536,442	72,576	176,120
General and administrative expenses (net of reimbursement by Drilling Funds)	93,044	144,270	130,558	210,443	378,890	90,719	56,374
Lease operating expenses	—	—	—	—	—	—	9,068
Interest expense	828	225	2,487	13,443	68,952	6,912	38,892
Depreciation and amortization	1,888	1,497	1,174	21,082	61,099	6,665	55,801
Taxes, other than Federal income taxes	812	1,758	2,535	17,588	40,127	7,588	11,144
Provision for Federal income taxes (note D)	—	—	—	5,000	113,000	2,000	—
Deferred Federal income taxes (notes 3 and 4)	—	—	—	84,000	(26,000)	11,000	60,000
Total costs and expenses	131,572	168,920	287,950	636,699	1,172,510	197,460	367,399
Net income (loss)	$ (3,326)	$ 4,417	$ 45,935	$198,355	$ 573,500	$ 65,310	$183,760
Per share amounts (note E)	(.002)	.003	.033	.142	.410	.047	.131

NOTES:

(A) Numerical referenced notes refer to the notes to financial statements.

PRUDENTIAL FUNDS, INC.

(B) In the statement of income (loss), the three years ended June 30, 1966 pertain to the Company's predecessor, Prudential Oil Corporation, which was organized in 1959 and acted as agent for participants in Drilling Funds. On July 1, 1966, the Company (organized in December 1965) issued all of its capital stock in exchange for the assets, liabilities and oil and gas management business of Prudential Oil Corporation.

On August 31, 1968, the Company acquired Prufin Corporation (see note (1) of the notes to financial statements). The acquisition was treated as a purchase for accounting purposes, and accordingly, the statement of income (loss) for the three months ended September 30, 1968 includes the accounts of Prufin Corporation for the month of September 1968. Prufin Corporation's business consists of making loans to participants in the Drilling Funds. Substantially all of the monies for such loans are borrowed from the Company. Because of the nature of its business, Prufin operates substantially on a breakeven basis, its major source of revenue being interest income and its major expense being interest expense. (For information relative to the borrowings by the Company, see note (5) of the notes to financial statements.)

(C) As explained in note (3) of the notes to financial statements, the Company follows the total cost method of accounting for its investment in Drilling Fund Units. In 1965 and 1966, Prudential Oil Corporation acquired units in Prudential Drilling Funds; however, no portion of the cost of these Units was amortized during these years. In 1967 the Company commenced amortizing the cumulative cost of its investment in Units. The amount of amortization applicable to prior years is not material; consequently, no retroactive adjustment has been made to the accounts of the prior years.

Under the total cost method of accounting, the time at which certain costs are deducted for book and tax purposes differs. In 1967 the Company followed the practice of providing for deferred Federal income taxes on all such timing differences, including intangible development costs. However, as permitted by a recent opinion of the Accounting Principles Board of the American Institute of Certified Public Accountants, the Company, in 1968, retroactively changed its method of accounting whereby it no longer provides for deferred Federal income taxes on intangible development costs. As a result of this change, net income for the year ended June 30, 1967 was retroactively increased by $36,000, which increase is reflected in the statement of income (loss) for 1967. The effect of the change for the year ended June 30, 1968 was to reduce the accrual for deferred Federal income taxes by approximately $158,000 with a corresponding increase in net income.

(D) For Federal income tax purposes, the Company files a consolidated tax return together with its parent company and other affiliates and its liability for income taxes, computed on a separate return basis, is paid to the parent company. Prior to 1968, the Company filed separate Federal income tax returns. No income tax provisions were required in 1964, 1965 and 1966 due to losses or deductions for tax purposes in excess of deductions for book purposes. The investment tax credit utilized to reduce Federal income taxes was not material in any of the years included in the statement of income (loss).

(E) Based on 1,400,000 shares outstanding at the end of each period after giving effect to the recapitalizations referred to in note (11) of the notes to financial statements.

Reference is made to "Supplemental Information To Statement Of Income (Loss)" on the following page.

SUPPLEMENTAL INFORMATION TO STATEMENT OF INCOME (LOSS)

It is anticipated that a Registration Statement will be filed in the near future with the Securities and Exchange Commission pursuant to which shares of common stock of a new corporation organized by the Company's parent, Prudential Equities Corp., will be offered in exchange for the property interests owned by the Company in certain of the Programs. Certain of the management of the new corporation will be affiliated with the management of the Company. If the exchange offer is made, of which there is no assurance, a substantial part of the property interests of the Company which are presently producing income, representing its overriding royalty and working interests in certain Programs, will be exchanged for shares of common stock of the new corporation upon which no dividends or other return can be expected in the foreseeable future. The results of operations as reflected in the financial statements included in this Prospectus, and specifically the overriding royalty income and income from Drilling Fund Units, as shown thereon, should not be considered indicative of the results of the operations of the Company if such exchange is made, inasmuch as the Company anticipates the transfer of property interests which in the year ended June 30, 1968 contributed approximately $235,000 to gross income and approximately $133,000 to net income of the Company and which in the three months ended September 30, 1968 contributed approximately $43,000 to gross income and approximately $27,000 to net income of the Company.

For accounting purposes, the Company realizes commission income on the basis of monies expended on behalf of participants. See Note 4 of the Notes to Financial Statements. The increase in gross income for the three month period ended September 30, 1968, as compared with such income for the three month period ended September 30, 1967, is attributable principally to an increase of drilling activities during the later period. The drilling activities are irregular and, accordingly, such increase during the period indicated should not be deemed to represent a proportionate increase on an annualized basis.

BUSINESS AND PROPERTY

Public Programs

Since 1960, the Company and its predecessor have organized and managed seventeen public Programs (including the 1968 Year End Program, in the aggregate amount of $10,000,000, for which subscriptions are presently being processed) wherein means are provided for participants to spread their risk by participation and co-ownership in a number of oil and gas drilling ventures. In connection therewith, the Company has acted as Agent for the participants in the acquisition, testing, development and operation of the oil and gas lease or leasehold interests acquired for the participants by the Programs.

The Company in administering the various Programs attempts to spread the risks involved in oil and gas exploration and development by offering a reasonably large number of drilling prospects located through widespread geographical areas. The Company does not maintain its own staff of geologists, land men, engineers, etc., but rather uses the facilities of a number of independent oil operators in several states and in Canada to perform the required professional services, usually on a "turnkey" basis. The Company does retain a petroleum engineer at each of its regional offices and a landman at each of its offices to perform administrative and budgetary services. Under its arrangements with operators, the Company purchases on behalf of the participants a portion of the working interest in a lease for a fixed fee and the agreement of the operator to drill an exploratory well on such lease. None of the aforementioned operators are drilling contractors, and contracts for drilling are negotiated by the operators

on a competitive basis. The Company does not have any contracts with any operators which require it to maintain a continuing relationship and, thus, may change operators and geographical drilling locations as this appears economically desirable.

Customarily, the Programs have been conducted in each year under contractual arrangements pursuant to which the Company has publicly offered participations in an Annual Drilling Program at a price of $10,000 per Unit, and participations in a Year End Drilling Program at a price of $5,000 per Unit. Such prices constitute advances and payments to the Programs which are used to pay the participant's proportionate share of the costs incurred in the acquisition, testing by way of the drilling of a first exploratory well, completion costs or the costs of abandonment of any drilling venture. Such costs include leasehold costs, delay rentals, geophysical and other scientific services, drilling, testing, completing, plugging and abandoning dry holes, dry hole and bottom hole contributions, as well as the payment of the expenses in connection with the public offering and administering of Unit participations, registration and blue sky expenses, auditing, legal, custodian and other overhead costs, but excluding any commissions to dealers paid in connection with the sale of Unit participations. Operating costs of producing properties are charged pro rata to participants and are generally deducted from the proceeds of the sale of production. In addition, participants in the Programs have generally been obligated to pay for their pro rata share of completion costs at the end of the exploratory drilling period in respect of any particular Program, in an amount not to exceed 10% of the principal amount of each Unit. The completion costs include the costs of necessary additional equipment, such as storage facilities, pipes, separators, etc., requiring expenditures in excess of funds invested by participants.

Custodian banks are designated by the Company to receive and hold for the accounts of participants all funds received pursuant to the Programs, including the proceeds from the sale of oil and gas production or from the sale of leases and the like, and to disburse funds for Program expenditures and distributions.

The present agreement with participants provides that each participant has the right to decline to participate in any drilling venture by written notice to the Company and, in that event, he is not liable for advance payments and not charged for any cost thereof. Such right of election with respect to individual drilling ventures will not be provided for in future programs. Participants are also charged and billed separately for the costs of any further development of any property included in a drilling venture, which may be by way of additional (development) wells or the acquisition of additional interests in the properties dedicated to a drilling venture. Each participant may also elect not to participate in the development of the property in any venture, and unless he agrees to pay his pro rata share of the estimated costs thereof, he authorizes the transfer to the Company, without cost, of all of his interest in the property included in the proposed development, except for that number of acres necessary to conform to the spacing pattern then in effect for his interest in producing wells thereon. Prior to the 1968 Year End Drilling Program, such transfer was to all other participants who so participated in the development on a pro rata basis.

Each participant owns an undivided interest in each oil and gas leasehold interest acquired by the Company for the venture in which he participates, in the ratio of the funds of the participant spent for such leasehold interest to the total amount spent therefor by all participants. In connection with the administration, supervision and accounting to the participants for their investment, leasehold interests and

income, the Company is empowered to hold, as nominee for each participant, title to all such leasehold interests and other properties acquired for such participants, and the Company's subsidiary, Connecticut Exploration Corporation, is empowered to hold title to Canadian interests and other properties as nominee. Ordinarily no separate examination of the title to the oil and gas interests acquired by the Programs is made by the Company and reliance is placed upon examination made by and on behalf of the operators from whom assignments are received with covenants of special warranty. Title to the properties is generally held of record in the name of the Company as nominee for the participants but in certain instances record title continues to be held in the name of certain of the Company's predecessors.

Each Program offered to participants is registered with the Securities and Exchange Commission under the provisions of the Securities Act of 1933, as amended, and is qualified for offering under the securities laws of the various States in which the offering is made. In certain instances, the Company is required to register as an issuer or broker-dealer as part of such State qualification. The costs of such registration and qualification are charged to each Program which is commenced. In the event any proposed Program which is hereafter proposed, is not commenced because the amount of subscriptions received from participants is deemed inadequate by the Company, such costs and expenses will have to be borne and paid for by the Company. The pro rata costs paid by participants in connection with the development of properties in each Program, after completion of initial or exploratory wells (whether by way of drilling additional wells or the acquisition of additional interests in the properties dedicated to a drilling venture), are not separately registered or qualified under the various securities laws and, in the opinion of counsel for the Company, such registration and qualification is not required. During the years 1966 and 1967 and in 1968 (through September 30), participants paid aggregate costs for development of properties amounting to $931,312, $2,482,200 and $5,414,400, respectively.

The activity of the Company in conducting the various Programs involves, in part, the offering and sale of "securities" as that term is defined under various applicable securities laws, and accordingly the Company may be deemed to be engaged in a phase of the securities business. Failure by the Company to comply with the requirements of the various applicable Federal and State securities laws, and the rules and regulations issued thereunder, may subject the Company to material liabilities, including penalties.

As compensation for the management and administration of the Programs, the Company is entitled to receive 6% of monies (exclusive of lease operating expenses) payable by participants pursuant to their contractual agreements with the Company, and is also entitled to receive at the pipeline out of each participant's undivided interest in every oil and gas leasehold an overriding royalty interest which shall bear the same relationship to 3/32nds of all oil, gas and casinghead gas produced and saved from the leasehold as such participant's working interest bears to the total working interest therein. Also, the Company is reimbursed by the Programs for an allocable portion of the general, administrative and overhead expenses incurred by the Company in connection with the management thereof.

The Company pays to the members of the National Association of Securities Dealers, Inc. who effect sales of Unit participations in the Programs a commission of 5% of the principal amounts of any such Unit participations sold. In addition, members who effect such sales in excess of specified amounts in respect of a particular program may elect to receive, in lieu of such 5% commission, compensation

in an amount equal to a percentage of one-half of the Company's 3/32nds overriding royalty interest, which compensation is to reflect the proportion that the number of Unit participations sold by the member bears to the total number of Unit participations which are sold in such Program.

The Company's and its predecessor's gross compensation through September 30, 1968 for managing the Programs is shown in the following tabulations.

Program	Programs Aggregate Amount	Company's and Predecessor's Gross Compensation(1)	
		Cash(1)	Mesa Petroleum Co. Common Stock(2)
1960	$ 321,840	$ 28,766	510 Shares
1960 B	467,250	39,743	1,159 Shares
1961 Year End	90,000	4,324	
1962 Annual	1,034,745	93,192	2,327 Shares
1962 Year End	372,300	23,045	1,582 Shares
1963 Annual	1,963,000	164,753	
1963 Year End	410,550	44,605	
1964 Annual	1,380,400	116,967	
1964 Year End	468,000	44,903	
1965 Annual	2,548,584	201,871	
1965 Year End	1,522,110	154,048	
1966 Annual	6,657,000	483,153	
1966 Year End	4,906,200	375,184	
1967 Annual	10,552,000	718,956	
1967 Year End	9,346,400	585,850	
1968 Annual	10,000,000	600,000	
1968 Year End	10,000,000	450,000	

(1) Represents gross commissions and income received from 3/32 overriding royalty interests, all of which has heretofore been received by the Company or its predecessor in cash and all of which has been reflected as income, except $724,212 attributable to unexpended Program monies.

(2) The shares of Mesa Petroleum Company of Amarillo, Texas, which are reflected in the foregoing figures were acquired by the predecessor of the Company in 1964, pursuant to an offer made by Mesa Petroleum Company to exchange its shares of Common Stock on a tax-free basis for the overriding royalty interests received by the predecessor of the Company in respect of the 1960 Drilling Fund, 1960 B Drilling Fund and 1962 Annual and Year End Drilling Funds. Such shares are not owned by the Company but were distributed as a dividend to the shareholders of the predecessor company.

Under applicable tax law, participants in the Programs are entitled to treat as deductible expenses, rather than capital items, their proportionate share of expenditures which qualify as intangible development costs with respect to drilling ventures in which they participate. Expenditures for tangible property such as equipment, tubing and tanks are generally capitalized, but the cost of the tangible property is depreciated over its useful life. Lease purchase costs are capital expenditures and are not deducted as expenses; however, if a lease is proved worthless by abandonment, the cost thereof may be deducted by participants as an ordinary loss rather than a capital loss. Participants also report their proportionate share of income attributable to drilling ventures in which they participate, and, in computing taxable income, are entitled to deduct percentage depletion or cost depletion, whichever is greater. To the extent the Company has purchased Units in the Programs for its own account, the aforementioned tax attributes are available to and will be availed of by the Company to offset its taxable income.

Private Drilling Ventures

In 1967, the Company entered into an agreement for the administration of a private drilling venture which operated under terms, conditions and operating procedures comparable to the Programs. Since that time the Company has entered into four additional agreements to manage private drilling ventures and may, from time to time, enter into additional agreements. The private drilling ventures may acquire from independent oil operators interests in the same properties as the Programs. However, no interests therein are to be acquired from operators on behalf of private drilling ventures (1) until the interests of the Programs in each property have been determined and (2) except upon terms and conditions which are not more favorable than those which were applicable to the Programs.

The private drilling ventures are developed exclusively for individuals with substantial sums to invest. Accordingly, the ventures, which have ranged in amount from $500,000 to $1,500,000, are negotiated on an individual basis. Subscriptions to the above five private drilling ventures commencing prior to October 31, 1968 amounted to $1,200,000, $1,500,000, $500,000, $500,000 and $825,000, respectively. As compensation for the management and administration of the private drilling ventures, the Company is entitled to receive 6% of monies (exclusive of lease operating expenses) payable by a participant pursuant to his contractual agreement with the Company, as well as an overriding royalty interest identical to that received in connection with the Programs. In respect of two of the private drilling ventures, the Company paid a fee of 3% of the principal amounts subscribed to members of the National Association of Securities Dealers, Inc. In connection with two other private drilling ventures, certain members of the National Association of Securities Dealers, Inc. will receive an amount equal to one-half of the Company's overriding royalty interest with respect thereto. The Company's compensation earned through September 30, 1968 from private drilling ventures (based on actual expenditures) amounted to $131,663. Effective as of July 1, 1968, the Company purchased the interests in the oil and gas properties previously administered by it in connection with the first private drilling venture. See "Recent Developments" herein.

Future Programs

The Company proposes to continue as its principal business the conduct of its Programs and private drilling ventures for participants under agreements generally similar to those presently in effect, with such changes as may be deemed advisable to comply with applicable laws and regulations or otherwise. As indicated above, commencing with its next Program, participants will no longer have any right to decline to participate in any venture during the initial exploration period.

The Company does not intend to engage in the acquisition, exploration, or operation of oil and gas properties for its own account, and generally intends to limit its activities in the oil and gas field to those properties acquired for its own account through the operation of its Programs and ventures. It should be recognized that amendments to the Federal tax laws or regulations reducing the depletion allowance or imposing limitations on deductions for drilling and intangible development costs would have a severe adverse effect upon the amount of funds which the Company could raise for its Programs and ventures and would adversely affect its future business. The ability of the Company to continue to induce participants to invest in exploratory activities through the Programs and drilling ventures is necessarily dependent upon the results being achieved in finding and producing oil and gas. The results of past programs and drilling ventures should not be considered indicative of the results of operations of the Programs and ventures in any future period. Since the business of exploring for and producing oil and gas is highly speculative and involves risk of loss to the participants, there is, of course, no assurance that the Company will be successful in the offering of Units to participants in future Programs and drilling ventures. See also information set forth under the caption "Competition and Regulation", herein.

Prufin Corporation

On August 31, 1968, the Company acquired from its parent, Prudential Equities Corp., all of the issued and outstanding shares of Common Stock of Prufin Corporation, a Delaware corporation. See "Interest of Management and Others in Certain Transactions".

The business of Prufin Corporation ("Prufin") consists of making loans to participants from time to time and on a selective basis for the purpose of financing a portion of the purchase of Unit participations in the various Programs administered by the Company, as well as a portion of exploration and development costs on the properties in which the participants have an interest by reason of their participation in the various Programs. Substantially all of the monies for such loans are borrowed from the Company, which, in turn, borrows such sums at interest rates which now range from 7% to 8½% per annum. Prufin's loans have been made at the rate of 6% per annum in limited amounts primarily as an accommodation to regular subscribers who participate in the various Programs. Interest rates are set by Prufin at the time of the making of such loans. The loans are evidenced by notes and are secured by all Unit participations in the Programs owned by the participants, as well as an assignment of their net production income therefrom. Due to the nature of its business, the operations of Prufin are not intended to contribute to the earnings of the Company.

Since the need for funds by a particular Program does not necessarily coincide with amounts due to the Program by Prufin, with respect to Unit participations which were financed by it, arrangements have been made whereby such payments to the Programs have been delayed. The amounts payable by Prufin to the Programs (which aggregated $758,926 on September 30, 1968) will be paid in full prior to December 31, 1968 from the net proceeds of this offering. See "Use of Proceeds" herein.

Oil and Gas Interests

The Company owns working interests in oil and gas properties in fourteen states and four provinces in Canada on which a total of 498 productive oil and gas wells have been drilled through June 30, 1968. Such interests were acquired by the Company for its own account by direct purchase of Unit participations in various Programs administered and managed by the Company and from participants in such Programs, as well as by the purchase in 1968 of the interests in oil and gas properties acquired pursuant to a private drilling venture previously administered and managed by the Company. The Company has also acquired overriding royalty interests in the properties acquired for the Programs as compensation for its administration and management of the Programs.

The Company owns no drilling rigs and all drilling on properties in which the Company has an interest is done by individual operators on a competitive basis similar to the operation of the properties administered by the Company in connection with the Programs.

The Company's interest in oil and gas producing properties at June 30, 1968 is summarized as follows:

	Number of Producing Wells (Gross)		Average Net Revenue Interest			
			Company's Working Interest		Company's Overriding Royalty Interest	
	Oil	Gas	Oil	Gas	Oil	Gas
CANADA						
Alberta	6	3	.072735	.016753	.012285	.017730
British Columbia	—	5	—	.003577	—	.024383
Ontario	—	2	—	.009212	—	.072375
Saskatchewan	79	5	.054958	.005615	.019742	.036090
UNITED STATES						
Arkansas	1	—	.008283	—	.023805	—
California	2	—	.027531	—	.026250	—
Colorado	—	1	—	.014721	—	.013700
Illinois	6	—	.008046	—	.029792	—
Kansas	1	1	.002397	—	.016524	.036709
Louisiana	14	6	.017166	.025880	.014185	.016125
Mississippi	3	—	.008319	—	.021093	—
Montana	2	3	.000051	.002790	.000489	.033479
New Mexico	11	6	.010437	.027513	.025536	.034523
Ohio	3	—	.001832	.003830	.022040	.047660
Oklahoma	33	27	.015055	.036862	.020995	.019001
Texas	225	42	.020533	.019984	.024685	.021753
West Virginia	4	—	.007599	.003082	.038473	.038418
Wyoming	6	1	.022534	.003569	.033883	.049218

The following table summarizes, on a cash basis, income from the working interests in the oil and gas properties owned by the Company and from its 3/32nds overriding royalty interests received as compensation for managing Programs, for the periods indicated.

Calendar Year	Company's Working Interests(2)	Company's 3/32nds Overriding Royalty Interests(3)	Total
1963	—	$ 37,537	$ 37,537
1964	—	19,199	19,199
1965	$ 3,339	39,281	42,620
1966	9,975	70,634	80,609
1967	26,397	213,688	240,085
1968(1)	29,076	140,522	169,598

(1) Through June 30, 1968.

(2) Represents gross working interest before deduction of operating expenses.

(3) Net of production taxes.

A portion of the overriding royalty and the working interests of the Company have been assigned to banks in connection with certain loans made to the Company. See Notes 3 and 5 of the Notes to Financial Statements.

The Company has purchased in the past and expects to continue to purchase for its own account Unit Participations in the Programs which it manages. In the Programs undertaken in the years 1966 and 1967, participations amounting to $105,000 and $320,000, respectively, were purchased by the Company. The Company purchased Unit participations amounting to $240,000 in the 1968 Annual Drilling Program and $100,000 in the 1968 Year-End Drilling Program. The Company will purchase Unit participations in the 1969 Annual Drilling Program in the amount of $100,000 from the net proceeds of this offering. See "Use of Proceeds" herein. In addition, the Company has purchased, and may from time to time purchase, the interests of certain participants in its Programs at negotiated purchase prices.

A 406

Reserves

A study of certain of the oil and gas reserves of the Company has been made by DeGolyer and MacNaughton, petroleum engineers, as of July 1, 1968. The following letter summarizes such reserve study:

DEGOLYER AND MACNAUGHTON
5625 DANIELS AVENUE
DALLAS, TEXAS

Prudential Funds, Inc.
90 Broad Street
New York, New York

September 4, 1968

Gentlemen:

Pursuant to your request we have made an investigation, as of July 1, 1968, of the proved oil, condensate, natural gas liquids, and natural gas reserves of certain properties in which Prudential Funds, Inc., has interests. These reserves are located in Canada and the United States and pertain only to those interests of Prudential which were acquired prior to January 1, 1967 and which were developed as of July 1, 1968.

Information used in the preparation of this report was obtained from records of Prudential Drilling Funds, from records of the several companies which operate the properties, from records on file with the various regulatory agencies and from our files. All information furnished, including the character and ownership of the properties, was accepted as represented. It was not considered necessary to make a field examination of the properties for the purposes of this report.

Only estimates of proved developed reserves are included in this report. Proved reserves are defined as those which have been proved to a high degree of certainty for commercial production by completion or positive testing.

Gas reserves in this report were estimated only for those properties from which gas is sold, or, according to present plans, soon will be sold and for shut-in gas wells. All gas volumes reported here are expressed at 60 degrees Fahrenheit and at the legal pressure base that prevails in the state in which the reserves are located; specifically, in Colorado and New Mexico and British Columbia at 15.025 pounds per square inch absolute, Buick Creek field in British Columbia at 14.73 pounds per square inch absolute, and in Alberta, Saskatchewan, Ontario, Oklahoma and Texas at 14.65 pounds per square inch absolute.

Condensate reserves reported herein are those to be obtained by normal separator recovery.

Natural gas liquids reserves are reported for those properties from which produced gas is being processed and are based on current yields and applicable allocation to the lease.

We estimate, as of July 1, 1968, the total net proved reserves of certain interests of Prudential Funds, Inc., to be 200,042 barrels of oil, 17,408 barrels of condensate, 19,134 barrels of natural gas liquids, and 6,424,969 thousand cubic feet of gas.

Approximately 75 percent of the net proved oil reserves, 100 percent of the condensate and natural gas liquids reserves, and 49.4 percent of the net proved gas reserves are located in the United States.

Submitted,

DEGOLYER AND MACNAUGHTON

Competition and Regulation

The Company faces keen competition from numerous companies conducting oil and gas programs. In connection with the sale of interests in the Programs, the Company encounters strong competition from major oil companies and other independent operators in acquiring prospects, properties or leases for the Programs. There is also intense competition for funds for exploratory drilling due to the speculative nature of the business of exploring for and producing oil and gas and the limited amount of funds available for such purposes.

Inasmuch as the business of exploring for and producing oil and gas is so highly speculative, it involves risk of loss to all participants therein, including the Company. There is no assurance that the Company will achieve any financial success from its interests in oil and gas properties. See "Oil and Gas Interests" herein. Nor is there any assurance that the Company will continue to be able to obtain funds from participants in future Programs for investment in oil and gas properties. See "Future Programs" herein.

The availability of a ready market for oil and gas, if any, discovered under the various Programs will depend on numerous factors beyond the control of the Company, including the production of other crude oil and natural gas, crude oil imports, the marketing of competitive fuels, the proximity and capacity of oil and gas pipelines, regulation of allowable production by governmental authority, and regulation by the Federal Power Commission of the transportation and marketing of natural gas transported or sold in interstate commerce in the United States.

Various States of the United States have statutory provisions regulating the production of oil and natural gas. In Texas and Oklahoma, the regulations extend to requiring permits for the drilling of wells, the spacing of wells, the prevention of waste, the conservation of natural gas and oil, and various other matters. The regulations generally impose restrictions on the production of crude oil and natural gas in certain areas by reducing the rate of production from individual wells below their actual capacity to produce. Thus, each oil well is assigned by the State authorities a basic allowable in barrels of oil per day, often referred to as the "basic demand factor", arrived at in the light of the depth, spacing, potential and other technical data of the well. The actual allowable of production is determined by multiplying the basic allowable by a percentage, also determined from time to time by the State authorities, which in Texas was approximately 41.3% in November, 1968. A similar regulatory procedure for allowables exists in Oklahoma, the percentage being approximately 75% in November, 1968.

Allowable daily production of oil and gas is regulated by certain of the Canadian provinces. Production schedules vary from field to field on the basis of technical production and conservation data for each field, and production is allocated to market demands. Allowables in Alberta during the month of November, 1968 varied from 30 bbls. per day to 1300 bbls. per day, depending on the field, the majority falling in the range of 35 to 55 bbls. per day. Allowables in Saskatchewan and British Columbia tend to run somewhat higher.

Leases

The principal executive offices of the Company are located at 90 Broad Street, New York City, in leased premises consisting of 7,000 square feet of office space. Under the terms of this lease, which expires April 30, 1983, the Company is obligated to pay an annual rental of $37,170. The Company

also occupies 850 sq. ft. of office space in Dallas, Texas and 1,008 sq. ft. of office space in Denver, Colorado under leases expiring in 1971 which call for aggregate annual rental payments of $9,492. The offices in Dallas and Denver are used as regional offices of the Company.

Employees

The Company employs approximately 30 persons, of whom two are petroleum engineers and the remainder are employed primarily in executive, administrative and clerical positions. The Company has a group life and disability insurance plan and a group accident and health insurance plan, the costs of which are borne by the Company. The Company also has a retirement plan for all employees who have been employed by the Company for one year. See "Remuneration" herein. The Company maintains satisfactory relations with its employees.

Recent Developments

Pursuant to a Purchase Agreement, dated May 28, 1968, the Company acquired, effective as of July 1, 1968, the interests in oil and gas properties acquired pursuant to a private drilling venture then administered and managed by the Company in which the investor had expended as at July 1, 1968 approximately $950,000, and had incurred liabilities of approximately $302,050. The purchase price for the interests, which was negotiated at arm's length, aggregated $1,252,050, of which $950,000 was paid in cash and the balance by assumption of certain liabilities attributable to the development and operation of the properties. An aggregate of $500,000 of the cash portion of the purchase price was borrowed from banks on a short-term basis, of which amount $230,000 has heretofore been paid and the balance of $270,000 will be repaid out of the proceeds of shares offered hereby. See "Use of Proceeds" herein.

In connection with the 1968 Year End Drilling Program, the Company is empowered to organize a Limited Partnership to continue that Program when, in its judgment, the drilling activities with respect to the properties therein have reached an appropriate stage of development. The Limited Partnership, in the event organized, would provide the means whereby the interest of each of the participants in the properties in the Program, representing an interest in real estate, would become a Limited Partnership interest, representing an interest in the Limited Partnership assets. Accordingly, financing for further development of the properties is facilitated without the need for the participant to put up additional funds and also the disposition of the interest of the participant upon his death is simplified. Upon organization of the Limited Partnership, of which there is no assurance, the Company would be the General Partner and the participants in the Program in contributing to the Limited Partnership their property interests in the Program, would be the Limited Partners. As General Partner, the Company will be entitled to receive as compensation for its supervision and other services in connection with the business of the Limited Partnership, 6% of all monies received by the Limited Partnership other than the proceeds of any borrowings by the Limited Partnership or the proceeds of the sale of oil or gas production or derived from the sale or exchange of any assets of the Limited Partnership, except proceeds from the sale of production payments or similar interests. In addition, the Company will continue to own the overriding royalty interests which it acquired by reason of administering the Program.

See "Supplemental Information to Statement of Income (Loss)" herein for a description of the proposed exchange offer to be made for certain oil and gas property interests of the Company.

MANAGEMENT

The officers and directors of the Company, their principal occupations, and their positions with the Company's parent, Prudential Equities Corp., are as follows:

NATHAN M. SHIPPEE*—President, Treasurer and Director. Officer of the Company and its predecessors since 1962. Chairman of the Board and Treasurer of Prudential Equities Corp.

RAYMOND J. KERESTER*—Executive Vice President and Director. Officer of the Company since 1966. Attorney, Staff Tax Counsel to Standard Oil Company of New Jersey from 1956 to 1966 and Staff Attorney, Office of the Chief Counsel, Internal Revenue Service, from 1953 to 1956. Executive Vice President, Secretary and Director of Prudential Equities Corp.

C. HAYDEN ATCHISON—Senior Vice President—Operations. Vice President in charge of exploration for Coastal States Gas Producing Company, oil and gas operators, from 1964 through October, 1968. Formerly Chief Geologist of British American Oil Producing Company from 1951 to 1964. Senior Vice President of Prudential Equities Corp.

WILLIAM J. SOTER—Vice President. Attorney, associated from 1961 to 1967 with law firm of Calfee, Halter, Calfee, Griswold & Sommer, Cleveland, Ohio, and a partner of that firm from 1967 until October, 1968. Vice President of Prudential Equities Corp.

J. PARKER COATES—Financial Vice President and Director of the Company since late 1967. From 1962 to 1967, associated with First National City Bank. Financial Vice President and Director of Prudential Equities Corp.

PATRICIA R. MOREL* (Mrs. Nathan M. Shippee)—Administrative Vice President, Secretary and Director. Employee of the Company and its predecessors since 1964. Office Manager of Inpak Systems, Inc., machinery leasing corporation (now a Division of United Shoe Machinery Corp.), from 1961 to 1964. Assistant Secretary of Prudential Equities Corp.

C. JAY PELLICONI—Vice President and Director. Manager, Municipal Bond Department of Winslow, Cohu & Stetson, Inc., investment bankers, from 1963 to 1966. From 1962 to 1963, associated with The Northern Trust Company. Vice President and Director of Prudential Equities Corp.

HENRIETTA STRUSZ—Assistant Secretary. Office Manager of Inpak Systems Division, United Shoe Machinery Corp. from 1964 to February 1968. From 1962 to 1964—Secretary of Inpak Systems, Inc. and Inpak Leasing Systems, Inc., machinery leasing corporations.

JAMES C. BUTT—Director. Private Investments. Director, Anchor Hocking Glass Co. Director of Prudential Equities Corp.

RICHARD N. FUNKHOUSER—Director, President of Har-Tru Corporation, builders of tennis courts. Director of Prudential Equities Corp.

FREDERICK M. GLASS*—Director. Vice Chairman of Cosmos Bank, Zurich, Switzerland and Chairman of Cosmos American Corporation, a wholly-owned subsidiary of Cosmos Bank. Primarily engaged in lending and investment banking activities. Director of Prudential Equities Corp.

---

* Members of the Executive Committee.

CARLETON E. HAMMOND—Director. Investment Consultant. Director, Hall Communications, Inc., newspaper syndicate. Formerly Vice President of The State National Bank of Connecticut, Greenwich, Connecticut. Director of Prudential Equities Corp.

WILLIAM KALELLIS—Director. Senior Vice President of Janney, Battles & E. W. Clark Inc., investment bankers. Director of Prudential Equities Corp.

CHARLES J. KUSHELL, JR.*—Director. Associated with Bacon, Whipple & Co., Chicago, Illinois, investment bankers. Formerly Vice President of Montgomery Ward & Co. Director of Prudential Equities Corp.

JOSEPH MEACHAM—Director. Partner, Walters, Peck & Co., floor specialists; Member, New York Stock Exchange. Director, First National Bank, Spring Lake, New Jersey. Director of Prudential Equities Corp.

MICHAEL F. SASSI*—Director. Investment Trust Officer, Chemical Bank New York Trust Company. Director of Prudential Equities Corp.

* Members of the Executive Committee.

The above officers and directors of the Company hold substantially the same positions with the Company's subsidiaries, Connecticut Exploration Corporation and Prufin Corporation.

The Company's management has professional experience in securities, banking, and petroleum exploration, but relies upon a group of oil companies for geological judgment, oil and gas operating activities, and experience in exploration and development of oil and gas properties. See "Public Programs" herein.

Effective July 1, 1968, William Hessin was retained as Exploration Consultant for the Programs administered by the Company. Mr. Hessin, a petroleum engineer, was a partner and operations and consultant engineer in Development Services Corp., Denver, Colorado, a consulting firm to the oil and gas industry, from 1963 to 1967. He was also a petroleum consultant for Verde Enterprises and Ancora Corp., consulting firms to the oil and gas industry, from 1959 to 1963, and from 1946 to 1955 was a district engineer with Gulf Oil Corporation and a Vice President in Pennsylvania Oil Gas Management Associates, a petroleum consulting firm.

Remuneration

The aggregate compensation paid by the Company to the thirteen officers and directors as a group for the year ended June 30, 1968 was $120,190, exclusive of special bonuses aggregating $12,550 to three officers of the Company, awarded in December, 1967. For the year ended June 30, 1968, the compensation of Mr. Nathan M. Shippee, President of the Company, was $45,850. No other officer or director received compensation in excess of $30,000 during the fiscal year.

Effective November 1, 1968, Mr. Shippee, as President and Treasurer of the Company, and Mr. Raymond J. Kerester, Executive Vice President of the Company, receive compensation at the rate of $49,600 and $36,000 per annum, respectively, exclusive of bonuses.

The Company, effective November 6. 1968, entered into an employment agreement with Mr. C. Hayden Atchison employing him as Senior Vice President in charge of Operations through December 31, 1971 at an annual base salary of $36,000 plus a regular bonus of not less than 25% of such base salary, as well as a special annual incentive compensation payment, as shall be awarded to him by the Company's Board of Directors, taking into account the over-all performance of the Company's operation for the applicable period, which payment shall not be less than $5,000 per annum. Effective October 21, 1968, the Company also entered into an agreement with Mr. William J. Soter employing him in an executive capacity for a term of not less than 3 years at an annual base salary of $35,000 plus an automatic 25% annual bonus thereon.

An Employees' Retirement Plan and Trust was adopted by the Company, effective in October, 1966, and was amended in August, 1967, to qualify the same under the provisions of the Internal Revenue Code. All regular full-time employees of the Company, who have completed one full year of continuous service with the Company are eligible to participate therein. The Plan provides guaranteed retirement income based upon fixed guaranteed and variable benefits provided by national insurance companies. Mr. Nathan M. Shippee is eligible to participate under said Plan and the estimated annual benefits, as actuarially determined, to be received by him thereunder are $13,424, based on the assumption that he will survive and continue in the employ of the Company until the normal retirement age of sixty-five and that the Plan will continue and its benefit provisions remain unchanged. The annual cost to the Company of the Plan during the 1968 fiscal year was approximately $17,000, and was paid in level quarterly installments. Effective as of October 15, 1968, approximately 7 additional employees became participants in this Plan, with a resulting increase in the annual cost of the Plan to $36,166.

PRINCIPAL HOLDERS

The Company has issued and outstanding at the date of this Prospectus 1,400,000 shares of Common Stock, $.10 par value, all of which is owned by Prudential Equities Corp. (formerly known as Prudential Oil Corporation). See "The Company" herein. Upon the completion of the offering covered by this Prospectus, Prudential Equities Corp. will own 80% of the 1,750,000 issued and outstanding shares of Common Stock of the Company.

As of the date of this Prospectus, the only person holding of record, or known to the Company to own beneficially, more than 10% of the 1,013,200 outstanding shares of Common Stock of Prudential Equities Corp., its only class of voting securities, was Nathan M. Shippee, who owned beneficially and of record 321,800 shares, or approximately 31.8% of such class. In addition, 84,800 shares (approximately 8.4%) were owned beneficially by certain members of Mr. Shippee's family. Mr. Shippee may be deemed the "parent" of Prudential Equities Corp. by reason of such stock ownership. The officers and directors of the Company, as a group, beneficially owned in the aggregate, as of the date of this Prospectus, 533,800 shares, or approximately 52.7% of such class. Bacon, Whipple & Co., the managing Underwriter of this offering, and an associate of that firm beneficially owned 40,000 shares. In addition, 100,000 shares were beneficially owned by another associate of that firm, whose 100,000 shares are included in the holdings of all officers and directors of the Company as a group. These holdings by Bacon, Whipple & Co. and its two associates amounted to approximately 13.8% of such class.

INTEREST OF MANAGEMENT AND OTHERS IN CERTAIN TRANSACTIONS

Prufin Corporation

In December, 1966, Prudential Equities Corp., the parent of the Company, acquired from the Company for $10,000 in cash (representing the Company's cost therefor) all of the issued and outstanding stock of Prudential Finance Corporation, a Delaware corporation. In July, 1967 the name of Prudential Finance Corporation was changed to Prufin Corporation. On August 31, 1968, the Company repurchased, at book value, from Prudential Equities Corp. all of the issued and outstanding stock of Prufin Corporation for an aggregate consideration of $85,958, payment being evidenced by the Company's 6% demand note. See Note 1 of the Notes to Financial Statements. From time to time the Company has borrowed sums which have been advanced to Prufin for the purpose of enabling the latter to finance Unit participations in the Programs. A major portion of the Company's loans to Prufin were derived from proceeds of short-term borrowings by the Company from banks which have been secured by a pledge of a portion of the Company's oil and gas interests and by the net proceeds from certain production. See Note 5 of the Notes to Financial Statements. The Company may hereafter borrow for the purpose of advancing funds to Prufin for the financing of Unit participation purchases and it may, from time to time, pledge or otherwise encumber certain of its properties, or the proceeds of production therefrom, in connection therewith. See Note (1) to the table under "Capitalization" herein.

Other Transactions

During the period from July, 1967 through the end of May, 1968, the Company loaned or advanced for the account of Prudential Equities Corp. an aggregate of $579,036, which was carried as open account indebtedness without interest. As of May 31, 1968, a dividend in the amount of $510,500 was declared by the Company so as to reduce, after taking into account repayments of $61,542 theretofore made, the amount of outstanding indebtedness as of said date to $6,994. (See statement under "Dividends" herein to the effect that the Company has no plans for the payment of dividends in the immediate future.) During the period from June 1, 1968 through October 31, 1968, open account advances by the Company to Prudential Equities Corp. amounted to $92,827 and repayments by Prudential Equities Corp. to the Company amounted to $100,000, resulting in indebtedness of $86,137 due to Prudential Equities Corp. at October 31, 1968, $85,958 of such sum being evidenced by the Company's 6% demand note given as payment for the purchase of the capital stock of Prufin Corporation. After the consummation of the offering the Company intends neither to borrow money from nor advance money to or for the account of Prudential Equities Corp. or any of its affiliated corporations, other than the Company's own subsidiaries.

Prudential Equities Corp. maintains its registered office in New York at the offices maintained by the Company and various persons who are officers and employees of the Company are also officers and non-salaried employees of Prudential Equities Corp. In view of the absence of any substantial activity of Prudential Equities Corp. other than through the Company and its subsidiary, Prufin Corporation, and the activity of its own subsidiary engaged in Madrid, Spain in the development of a real estate project, no allocation of rent or salaries is now made to Prudential Equities Corp. If such activities should be increased in the future, an appropriate allocation based on space occupied and time devoted to the affairs of Prudential Equities Corp. will be made with respect to office rental and salaries of

officers and employees. It is not intended, however, to make any such allocations on a basis of less than 10% of such costs as incurred by the Company.

Certain of the Company's officers and/or directors have acquired shares of common stock of Mesa Petroleum Company, such holdings constituting, in the aggregate, to the best of the Company's knowledge, a fraction of one percent of Mesa's outstanding stock. In its various Programs, the Company acquired a certain percentage of the working interest in various leases usually pursuant to turnkey contracts between the Company and former subsidiaries of Mesa Petroleum Company. Pursuant to these contracts, such companies agreed, for a definite sum arrived at by negotiation prior to entering into the contract, to furnish everything and do all work required to bring the well involved (to the extent of the percentage of the working interest so acquired) to casing point or to completion, as the case may have been. Such companies have also acted as third party operator with respect to lease interests acquired for such programs. It is presently anticipated that some of the leaseholds or leasehold interests acquired for future Programs may be acquired and operated under similar or other contracts between the Company and Mesa Petroleum Company and Mesa may profit therefrom.

Elliott Roosevelt, Jr., formerly exploration consultant for the Programs administered by the Company, founded General Petroleum Corporation, Denver, Colorado, and Texas Interstate Oil & Gas Company, Dallas, Texas, in which corporations he owns 100% and 50%, respectively, of the outstanding Capital Stock. These corporations have drilled wells for recent Programs and may do so in the future. He thus may profit from the proceeds of Programs. The amounts expended by the Programs with these corporations aggregated approximately $456,000 and $2,700,000 for the calendar years 1966 and 1967, respectively, and $4,300,000 for the nine months ended September 30, 1968.

Mr. Charles J. Kushell, Jr., a Director of the Company, is an associate of Bacon, Whipple & Co., which is a principal seller of Unit participations in the Programs and the managing Underwriter of this offering. For the calendar years 1966 and 1967, Bacon, Whipple & Co. has received $8,500 and $59,250, respectively, as commissions for sales of Unit participations and $22,000 for the nine months period ended September 30, 1968. Also, the firm is entitled to receive an additional sum of $89,750 as commissions for sales of Unit participations during 1968. A total of 140,000 shares of Common Stock of Prudential Equities Corp. (13.8%) are owned in the aggregate by Bacon, Whipple & Co., Mr. Kushell and another associate of that firm. See "Principal Holders" and "Underwriting" herein.

DESCRIPTION OF COMMON STOCK

The shares of Common Stock offered by this Prospectus will, when issued pursuant to the terms of the offering hereby contemplated, be legally issued, fully paid and non-assessable by the Company.

Holders have one vote per share and are entitled to share ratably in dividends paid and in the net assets on liquidation. There are no preemptive rights.

Non-Cumulative Voting

The shares of Common Stock do not have cumulative voting rights, which means that the holders of more than 50% of the shares voting for the election of directors can elect all of the directors if they choose to do so, and, in such event, the holders of the remaining less than 50% of the shares voting for the election of directors will not be able to elect any director or directors to the Board of Directors.

Dividends

The Company has no plan for the payment of dividends on its Common Stock in the immediate future. The future payment of dividends on its Common Stock, if any, will depend on the net earnings and financial condition and requirements of the Company and general business and other considerations.

Transfer Agents and Registrars

The Transfer Agents for the shares of Common Stock of the Company are First National City Bank, New York City, and Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois. The Registrars for such shares are Marine Midland Grace Trust Company of New York, New York City, and The First National Bank of Chicago, Chicago, Illinois.

Reports to Stockholders

The Company intends to provide the stockholders with annual reports which will contain financial statements certified by independent certified public accountants. The Company also expects to submit to stockholders quarterly reports which will contain unaudited summaries of earnings and to furnish them with such other reports as may be necessary to apprise stockholders of major developments concerning the Company.

LITIGATION

On July 13, 1967, the Company was named as one of the defendants in an action brought in the United States District Court, Western District of Louisiana (since transferred to the United States District Court, Southern District of Texas), in which the plaintiff seeks to enforce an alleged verbal agreement with Coastal States Gas Producing Company ("Coastal States") for payment of a "finder's fee" or "commission" by reason of the $1,300,000 proposed to be invested through the Company with Coastal States. The fee is alleged to be five percent of funds to be invested with Coastal States, as well as a two percent overriding royalty on any ventures with Coastal States resulting from sources alleged to have been obtained by the plaintiff. The plaintiff alleges that the Company has conspired with Coastal States to avoid payment of such fee. The plaintiff seeks a judgment specifically to enforce the alleged agreement, or, in the alternative, compensation for his services on a quantum meruit basis. An answer was filed by the Company in the action, denying any liability in connection with the claims asserted. Pre-trial conferences have been held and the trial of the action is scheduled for January, 1969. In the opinion of the firm of Burton M. Abrams, counsel for the Company, the action is without merit as against the Company. The Company has also been advised that in the opinion of the management of Coastal States, the action is without merit as against Coastal States.

Except as stated above, there are no material pending legal proceedings to which the Company is a party. The Company knows of no contemplated proceeding by governmental authorities against it or its properties.

A 415

UNDERWRITING

The Underwriters named below have severally agreed, subject to the terms and conditions set forth in the Underwriting Agreement, to purchase from the Company the number of shares of Common Stock set forth opposite their respective names:

Name of Underwriter	Address	Number of Shares
Bacon, Whipple & Co.	135 South La Salle Street, Chicago, Illinois 60603	87,000
Alex. Brown & Sons	135 E. Baltimore Street, Baltimore, Maryland 21202	30,000
Reynolds & Co.	120 Broadway, New York, New York 10005	30,000
Bateman Eichler, Hill Richards, Incorporated	460 South Spring Street, Los Angeles, California 90013	11,000
Blair & Co., Inc.	20 Broad Street, New York, New York 10005	11,000
Blunt Ellis & Simmons	111 West Monroe Street, Chicago, Illinois 60603	11,000
Dain, Kalman & Quail, Incorporated	110 South 6th Street, Minneapolis, Minnesota 55402	11,000
Loewi & Co. Incorporated	225 East Mason Street, Milwaukee, Wisconsin 53202	11,000
Hayden, Miller & Co.	Union Commerce Building, Cleveland, Ohio 44115	11,000
Janney, Battles & E. W. Clark, Inc.	1401 Walnut Street, Philadelphia, Pennsylvania 19102	11,000
Stern Brothers & Co.	1009 Baltimore Avenue, Kansas City, Missouri 64199	11,000
Underwood, Neuhaus & Co., Incorporated	724 Travis St. at Rusk Avenue, Houston, Texas 77002	11,000
Andresen & Co., Incorporated	140 Broadway, New York, New York 10005	8,000
Julien Collins & Co.	105 South La Salle Street, Chicago, Illinois 60603	8,000
A. G. Edwards & Sons, Inc.	409 N. 8th Street, St. Louis, Missouri 63101	8,000
Jesup & Lamont Incorporated	25 Broadway, New York, New York 10004	8,000
Kenower, MacArthur & Co.	1933 Ford Building, Detroit, Michigan 48226	8,000
McCormick & Co., Inc.	135 South La Salle Street, Chicago, Illinois 60603	8,000
Newburger & Co.	1401 Walnut Street, Philadelphia, Pennsylvania 19102	8,000
Putnam, Coffin & Burr-Doolittle, Inc.	6 Central Row, Hartford, Connecticut 06103	8,000
The Robinson-Humphrey Company, Inc.	Two Peachtree Street, N. W., Atlanta, Georgia 30303	8,000
Rodman & Renshaw	209 South La Salle Street, Chicago, Illinois 60603	8,000
Chas. W. Scranton & Co.	209 Church Street, New Haven, Connecticut 06507	8,000
Winslow, Cohu & Stetson, Incorporated	26 Broadway, New York, New York 10004	8,000
Woodcock, Moyer, Fricke & French, Inc.	1500 Chestnut Street, Philadelphia, Pennsylvania 19102	8,000
	Total	350,000

The Underwriting Agreement provides that the several obligations of the Underwriters are subject to certain conditions precedent, and the Underwriters will not be obligated to purchase any of the shares of Common Stock unless all are purchased.

Bacon, Whipple & Co., as Representative of the several Underwriters, has advised the Company that the Underwriters propose to offer the shares of Common Stock offered hereby directly to the public at the initial public offering price set forth on the cover page hereof and to Selected Dealers at a price which represents a concession not in excess of $.40 per share and that such Selected Dealers may reallow concessions of not in excess of $.125 per share on sales to other dealers. After the initial public offering, the public offering price, the concession to Selected Dealers and the reallowance concessions to other dealers may be changed by Bacon, Whipple & Co. as Representative of the several Underwriters.

In the Underwriting Agreement, the Company has agreed to indemnify the Underwriters against certain liabilities, including liabilities under the Securities Act of 1933.

LEGAL OPINIONS

Legal matters in connection with this offering are being passed upon for the Company by the firm of Burton M. Abrams, 630 Fifth Avenue, New York, New York 10020, and for the Underwriters by Messrs. Mayer, Friedlich, Spiess, Tierney, Brown & Platt, 231 South LaSalle Street, Chicago, Illinois 60604.

EXPERTS

The financial statements and schedules of Prudential Funds, Inc. or its predecessor, Prudential Oil Corporation, as applicable, for the two years and the three months ended September 30, 1968, have been examined by Peat, Marwick, Mitchell & Co., independent certified public accountants, and for the three years ended June 30, 1966, have been examined by Allen, Cassidy & Co., independent certified public accountants, both of whose reports appear elsewhere in the Registration Statement, and are included in reliance upon such reports and upon the authority of said firms as experts in auditing and accounting.

The report of DeGolyer & MacNaughton appearing under "Business and Property" has been included herein upon the authority of that firm as experts respecting the matters contained in their report.

ADDITIONAL INFORMATION

The Company has filed with the Securities and Exchange Commission, Washington, D. C., a Registration Statement under the Securities Act of 1933, as amended, with respect to the securities offered hereby. For further information with respect to the Company and the securities offered by this Prospectus, reference is made to the Registration Statement and the financial statements and exhibits filed as a part thereof. Statements contained in this Prospectus as to the contents of any contract or other document are not necessarily complete, and in each instance reference is hereby made to the copy of such contract or other document filed as an exhibit to the Registration Statement for a full statement of the provisions thereof, and each such statement in this Prospectus is qualified in all respects by this reference.

A 417

REPORTS OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

The Board of Directors
PRUDENTIAL FUNDS, INC.

We have examined the consolidated balance sheet of Prudential Funds, Inc., and consolidated subsidiary as of September 30, 1968 and the related statements of income (loss), capital surplus and retained earnings (deficit) for the two years and three months then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, such financial statements present fairly the financial position of Prudential Funds, Inc., and consolidated subsidiary at September 30, 1968, and the results of its operations for the two years and three months then ended, in conformity with generally accepted accounting principles applied on a consistent basis (as restated to reflect the change, which we approve, described in note (C) of the notes to statement of income (loss)).

PEAT, MARWICK, MITCHELL & CO.

New York, New York
November 25, 1968

The Board of Directors
PRUDENTIAL FUNDS, INC.

We have examined the financial statements of Prudential Oil Corporation for the three years ended June 30, 1966, including the statement of income (loss) for the three years then ended and the statements of capital surplus and retained earnings (deficit) for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, such financial statements present fairly the results of operations of Prudential Oil Corporation for the three years ended June 30, 1966, in conformity with generally accepted accounting principles applied on a consistent basis.

ALLEN, CASSIDY & CO.

Greenwich, Connecticut
July 14, 1966

A 418

PRUDENTIAL FUNDS, INC. AND CONSOLIDATED SUBSIDIARY

CONSOLIDATED BALANCE SHEET

September 30, 1968

ASSETS

CURRENT ASSETS:	
Cash	$ 321,370
Accounts receivable—oil and gas sales	90,760
Accounts receivable—other	12,696
Notes receivable from participants, including accrued interest ($11,991) at 6% (note 2)	1,377,991
Prepaid expenses and other assets	5,613
Total current assets	1,808,430
PROPERTY AND EQUIPMENT, at cost:	
Oil and gas interests (notes 1 and 3)	2,477,239
Furniture and fixtures (note 3)	105,032
	2,582,271
Less accumulated depreciation and amortization	141,926
	2,440,345
OTHER ASSETS AND DEFERRED CHARGES:	
Notes receivable from participants, non-current	684,610
Deferred commission expense (note 4)	492,391
Stock of Connecticut Exploration Corporation, at cost (approximates equity)	2,000
	1,179,001
	$5,427,776

See accompanying notes to financial statements.

A 419

PRUDENTIAL FUNDS, INC. AND CONSOLIDATED SUBSIDIARY

CONSOLIDATED BALANCE SHEET

September 30, 1968

LIABILITIES AND STOCKHOLDER'S EQUITY

CURRENT LIABILITIES:	
Notes payable to banks, including current maturities of long-term debt (note 5)	$1,516,136
Note and account payable to parent (note 1)	150,029
Commissions payable to brokers	574,244
Accounts payable to Drilling Funds (note 6):	
For Unit purchases and development	262,414
For financing of participants (note 2)	758,926
Accounts payable—other	369,634
Accrued liabilities	58,111
Federal income taxes payable	118,000
Total current liabilities	3,807,494
LONG-TERM NOTE PAYABLE TO BANK, LESS CURRENT MATURITIES (note 5)	71,986
DEFERRED CREDITS:	
Commission income (note 4)	823,009
Federal income taxes (notes 3 and 4)	117,000
	940,009
STOCKHOLDER'S EQUITY:	
Common stock, $.10 par value. Authorized, 5,000,000 shares; issued, 1,400,000 shares (note 11)	140,000
Capital surplus	23,172
Retained earnings	445,115
Total stockholder's equity	608,287
COMMITMENT AND CONTINGENT LIABILITY (notes 8 and 9)	
	$5,427,776

See accompanying notes to financial statements.

PRUDENTIAL FUNDS, INC. AND CONSOLIDATED SUBSIDIARY

STATEMENTS OF CAPITAL SURPLUS AND RETAINED EARNINGS (DEFICIT)

Three Years ended June 30, 1968 and Three Months ended September 30, 1968

CAPITAL SURPLUS

	Year Ended June 30,			Three Months ended September 30, 1968 (note B)
	1966	1967	1968	
Balance at beginning of period	$ —	$ —	$ 63,172	$ 63,172
Add: Excess of net assets of Prudential Oil Corporation over the stated value of the Company's stock issued in exchange for such net assets	—	63,172	—	—
Less: Amount transferred to common stock pursuant to the recapitalizations referred to in note (11)	—	—	—	(40,000)
Balance at end of period	$ —	$ 63,172	$ 63,172	$ 23,172

RETAINED EARNINGS (DEFICIT)

	(note)			
Balance at beginning of period	$(26,513)	$ —	$198,355	$261,355
Net income	45,935	198,355	573,500	183,760
Dividend paid to parent company	—	—	(510,500)	—
Balance at end of period	$ 19,422	$198,355	$261,355	$445,115

NOTE: Retained earnings attributable to Prudential Oil Corporation prior to its acquisition by the Company on July 1, 1966

See accompanying notes to financial statements.

PRUDENTIAL FUNDS, INC. AND CONSOLIDATED SUBSIDIARY

NOTES TO FINANCIAL STATEMENTS

(1) Basis of Accounts and Other Matters:

The consolidated balance sheet at September 30, 1968 includes the accounts of the Company and its wholly-owned subsidiary, Prufin Corporation, which was acquired from Prudential Equities Corp., parent of the Company, on August 31, 1968 for $85,958 (the net book value). Intercompany accounts have been eliminated in consolidation. The Company's investment in Prufin is carried at its equity in the underlying net assets of that company.

The Company acts as agent for participants in the Prudential Drilling Funds. Monies of the participants are received and disbursed by selected banks under custodian agreements and, accordingly, assets and liabilities of the Prudential Drilling Funds are not reflected in the accounts of the Company. The Company bills the Drilling Funds for direct expenses paid on behalf of the Drilling Funds and for an allocable portion of administrative and overhead expenses of the Company.

In addition, the Company has invested in oil and gas properties for its own interests and conducts private drilling ventures for individual investors. The properties involved in such activities are the same as certain properties included in the Prudential Drilling Funds.

In 1968, the Company changed its fiscal year from June 30, 1968 to May 31, 1968.

(2) Notes Receivable From Participants:

Prufin Corporation advances, upon request of certain Drilling Fund participants, a portion of exploration and development costs on certain properties. The notes receivable from borrowing participants bear interest at 6% and are secured by all Drilling Fund Units owned by the participants and an assignment of all net production income from such Units. Substantially all of the monies for such loans are borrowed from the Company, which, in turn, borrows such sums at interest rates of up to 8½% per annum. Based upon projections of net production income (cash flow) from Drilling Fund Units and direct repayments from participants, management is of the opinion that approximately two-thirds of the amount due from the participants $2,062,601 will be repaid prior to September 30, 1969. Accordingly, $1,377,991 has been included in current assets at September 30, 1968.

In connection with certain bank borrowings by Prudential Funds, Inc., the custodian of the Drilling Funds has been directed to remit to the lending bank a portion of the net proceeds from production from certain leases in certain of the aforementioned Drilling Fund Units owned by the borrowers from Prufin (see note 5).

(3) Property and Equipment:

Oil and gas interests at September 30, 1968 are summarized as follows:

Oil and gas properties owned directly	$1,362,429
Prudential Drilling Fund Units	1,114,809
Overriding royalty interests	1
	$2,477,239

Based on independent engineering reports and on reports from the operators of the properties, the value of the estimated oil and gas reserves attributable to the total oil and gas interests shown above, a substantial portion of which is attributable to the overriding royalty interests, is in excess of the aggregate carrying value thereof.

The Company has earned a 3/32 overriding royalty interest in the oil and gas reserves of prior public Drilling Funds and private drilling ventures. These interests are carried in the accounts at a nominal amount of $1.00. The overriding royalty interests on certain leases have been assigned as collateral for notes payable to banks (see note 5).

Substantially all of the oil and gas properties owned directly by the Company shown above, were acquired from a participant in a private drilling venture as of July 1, 1968 for a total consideration of $1,252,050. The consideration paid approximated the cost of the properties to the seller.

See "Supplemental Information to Statement of Income (Loss)" regarding the Company's intention to exchange certain of its overriding royalty interests and certain of its Units in various Drilling Funds for common stock of a new corporation.

PRUDENTIAL FUNDS, INC. AND CONSOLIDATED SUBSIDIARY

NOTES TO FINANCIAL STATEMENTS—(Continued)

Depreciation and amortization policies are as follows:

(a) Depreciation of furniture and fixtures is provided on the basis of age and estimated lives of the individual assets by the straight-line method.

(b) Expenditures on maintenance and repairs are charged to operations as incurred while expenditures on renewals and betterments generally are capitalized.

(c) When assets are retired or otherwise disposed of the excess of the cost of such assets over the salvage value realized is charged to accumulated depreciation.

(d) The Company follows the total cost method of accounting for its investment in 1) the Units of each Prudential Drilling Fund, and 2) the oil and gas properties owned directly. Under this method of accounting, all costs of acquisition, exploration and development are capitalized and amortized over the income producing life of successful wells in the properties owned directly and in the respective Funds. Due to the absence of reliable estimates of the underlying oil and gas reserves during the early stages of development, the Company uses an estimated life of ten years from the date commercial production commences. Upon completion of the development drilling for each Drilling Fund and the oil and gas properties, and the accumulation of reliable estimates of oil and gas reserves, the Company changes from the straight-line basis to the unit of production basis of amortization. For income tax purposes these costs, to the extent they are allowable deductions, are claimed in the year in which incurred. Deferred Federal income taxes are provided in the accounts to recognize timing differences in reporting these costs (other than intangible development costs) for income tax purposes.

(4) Commissions:

The commissions earned by the Company on Drilling Fund and drilling venture subscriptions and other monies payable by the participants under the agreements are taken into income, for accounting purposes, on the basis of expenditures by the applicable Fund or venture. The commissions to brokers are deferred for accounting purposes and taken into expense on the same basis as the commission income.

Deferred Federal income taxes are provided in the accounts to recognize timing differences in reporting commission income and expenses for tax purposes.

(5) Notes Payable:

The short-term notes payable to banks are due in varying amounts to August 29, 1969. One of the notes ($51,584) bears interest at 7½% and another ($914,552) bears interest at 7¼%. Both are repayable from proceeds of production from certain overriding royalty interests assigned to collateralize the notes with minimum quarterly payments, covering principal and interest, of $22,410 required on one of the notes. Additionally, the custodian of the Drilling Funds has been directed to remit to the bank the net proceeds from production from certain leases in certain Drilling Fund Units which secure indebtedness owed by participants to Prufin Corporation (see note 2). A third note ($200,000) is secured by assets of the Company and bears interest at 6¾%. Another note ($284,000) bears interest at 8½% and is repayable in monthly installments of $8,000, plus interest, with the balance payable in July 1969 and is secured by certain oil and gas properties of the Company.

The long-term note payable to bank bears interest at 7% and is repayable from proceeds of production from certain overriding royalty interests assigned to collateralize the note with minimum monthly payments of $5,500 plus interest.

(6) Accounts Payable to Drilling Funds:

Since the need for funds by particular Drilling Funds do not necessarily coincide with amounts ($758,926) due to the Funds by Prufin, with respect to Unit participations which were financed by it, arrangements have been made whereby such payments to the Drilling Funds have been delayed.

Additionally, the $262,414 payable to the Drilling Funds by the Company for Unit purchases and development has been called for by the Drilling Funds, but as of November 25, 1968 has not been paid.

PRUDENTIAL FUNDS, INC. AND CONSOLIDATED SUBSIDIARY

NOTES TO FINANCIAL STATEMENTS—(Concluded)

(7) RETIREMENT PLAN:

In October 1966 the Company adopted an insured retirement plan for regular full time employees. The annual cost of the plan covers all benefits as they vest and is funded currently by the Company. Effective as of October 15, 1968, the annual cost was increased from approximately $17,000 to approximately $36,000 due to additional eligible participants.

(8) COMMITMENT:

The Company is obligated under a long-term lease agreement expiring in 1983 for minimum annual rental payments approximating $37,000.

(9) CONTINGENT LIABILITY:

For information relative to litigation, see "Litigation" appearing elsewhere in the Prospectus.

(10) SUPPLEMENTARY PROFIT AND LOSS INFORMATION:

	Year Ended June 30,			Three months Ended September 30, 1968
	1966	1967	1968	
Charged directly to costs and expenses:				
Amortization of oil and gas properties	$ —	$ —	$ —	$33,547
Amortization of Prudential Drilling Fund Units	—	19,635	55,562	19,726
Depreciation of furniture and fixtures	1,174	1,447	5,537	2,528
	$1,174	$21,082	$61,099	$55,801
Taxes, other than Federal income taxes:				
State and local franchise and sales	$ —	$13,702	$30,000	$ 6,000
Payroll and other	2,535	3,886	10,127	5,144
	$2,535	$17,588	$40,127	$11,144
Charged to general and administrative expenses:				
Rents	$6,937	$17,054	$44,262	$11,040

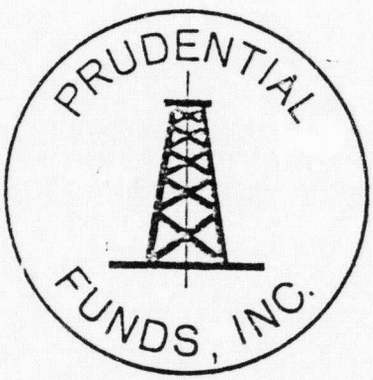
There were no charges in respect of management and service contract fees. Maintenance and repair expenses were not material.

(11) COMMON STOCK:

On September 3, 1968, the Company effected an amendment to its Certificate of Incorporation changing the number of authorized shares of Common Stock from 10,000 shares, without par value, to 5,000,000 shares, $.10 par value. In connection therewith, the 10,000 shares of Common Stock, without par value, of the Company then outstanding became 1,000,000 shares of Common Stock, $.10 par value. On November 6, 1968, upon the further change in capitalization described in note (4) under the section "Capitalization", appearing elsewhere in the Prospectus, the 1,000,000 shares then outstanding became 1,400,000 shares. Accordingly, the accompanying financial statements give effect to such change in capitalization.

A 424

PROSPECTUS



PRUDENTIAL FUNDS, INC.
90 BROAD STREET,
NEW YORK, N. Y. 10004

Until January 22, 1969 all dealers effecting transactions in the registered securities, whether or not participating in this distribution, may be required to deliver a Prospectus. This is in addition to the obligation of dealers to deliver a Prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Reply Affidavit of Robert MacCrate, Sworn to May 2, 1975 ,

and Exhibits Thereto

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

PRUDENTIAL OIL CORPORATION, :

Plaintiff, : 67 Civ. 3748 (CLB)

-against- : REPLY AFFIDAVIT OF

PHILLIPS PETROLEUM COMPANY, : ROBERT MacCRATE

Defendant. :

- x

STATE OF NEW YORK)
: ss
COUNTY OF NEW YORK)

ROBERT MacCRATE, being duly sworn, states:

1. I am a member of the Bar of this Court and a member of the firm of Sullivan & Cromwell, attorneys for defendant Phillips Petroleum Company ("Phillips"). I am fully familiar with the facts and prior proceedings had in this action, and submit this affidavit in reply to the affidavit in opposition of Nathan M. Shippee, sworn to April 1975.

2. In his affidavit Mr. Shippee urges that the assignment of this action from Prudential Delaware to Prudential New York in July 1966 was made for legitimate business purposes, and was part of Prudential Delaware's program of incorporating separate subsidiaries for the conduct and independent financing of its various business undertakings. Shippee Affidavit, ¶¶ 8, 13-23, 28 and 29. As Mr. Shippee has previously affirmed, however, the sole business undertaking of Prudential New York has been the

prosecution of this lawsuit, the company has no other assets or property, and, in fact, the claim itself is to recover "property rights of Prudential Delaware in and to the petrochemical complex in Puerto Rico" (Answers to Interrogatories 3 and 12, affirmed April 26, 1971).

3. These facts are established by the record in these proceedings: The first time that any claim of this sort was asserted by a Prudential company against Phillips was in the spring of 1966. It was asserted at that time by Mr. Shippee as a claim of the Delaware corporation then named Prudential Oil Corporation (subsequently and successively renamed Prudential Equities Corporation and Prudential Resources Corp.). While Mr. Shippee's interest in pressing that claim has waxed and waned over the intervening 9 years, (abandoning for up to 18 months on occasion any prosecution of this action), the fact remains that the assertion of the claim and the entire prosecution of the action, which was finally commenced in September of 1967, has at all times been under the control, financed by and allegedly for the benefit of Prudential Delaware.

4. At no point in the answering papers on the present motion does Mr. Shippee deny that the decision to incorporate the new Prudential Oil Corporation in New York in July 1966 was made in contemplation of the institution of this action or that those making the decision as to the State of incorporation chose New York with the possibility of invoking diversity jurisdiction in mind.

5. Mr. Shippee's detailed recitation in his affidavit is in sharp contrast with his account of the

BEST COPY AVAILABLE

same matters given on his deposition at a time when such matters were substantially fresher in his recollection. He now attempts, with the assistance of counsel, to retell and to reshape events of nine and ten years ago in a manner never told before in this action. In his testimony given in 1967, substantially closer to the events, he testified that Prudential Oil Corporation was the only New York corporation among the Prudential companies, and that Prudential Land Company was not a New York corporation (Tr. 87-88, attached as Exhibit A). Subsequently, in 1971, Mr. Shippee further testified that he had no recollection that he had heard of a proposed assignment in 1966 from Prudential Delaware to Prudential New York of the alleged claim against Phillips, nor could he recall that the reasons for such an assignment were ever discussed with him (Tr. 913-914, attached as Exhibit B).

6. In stunning contrast to his earlier testimony, Mr. Shippee now claims to have been fully informed as to the reasons for the actions taken in 1966. He attempts to tell a new and detailed story and produces documents as exhibits to his affidavit, which were requested by Phillips on November 1, 1967 (Tr. 159-160) but never furnished until this April 1975 affidavit (e.g., Exhibits K, N and Q). He tries to relate the corporate action taken in June and July 1966 to a public offering of stock late in 1968 with little regard for the events of the intervening two years relating to the institution of this action and the pretrial discovery which included his own deposition. Moreover, the public offering to which Mr. Shippee refers was not made by Prudential Delaware, but by Prudential Funds, which never had any connection with either Phillips or this lawsuit.

BEST COPY AVAILABLE

7. The burden of Mr. Shippee's affidavit is to display that Prudential Delaware desired, in certain circumstances, to pursue certain of its business undertakings through separate corporate vehicles. What connection there is between this professed desire to conduct business in separate corporate pockets and the assignment of a lawsuit by Prudential Delaware to a wholly owned subsidiary with no business activities whatsoever to conduct, is nowhere explained by Mr. Shippee.

Robert MacCrate

Robert MacCrate

Sworn to before me this
2nd day of May, 1975

NOTARIAL SEAL

IRENE K. MENTEL
Notary Public, State of New York
Residing in Queens County
Queens Co. Clk's No. 41-7303895
Certificate Filed in
New York Co. Clk's
Commission Expires March 30, 1976

Exhibits Annexed To Reply Affidavit of
Robert Mac Crate

Oil Corporation, a Connecticut corporation, when we undertook the project. Prudential Oil Corporation, the plaintiff, is a New York corporation today. In the interim period the business took on many different aspects, including real estate, drilling funds, and we reorganized it for the sole purpose of taking the individual businesses under representative management and representative names, so that the Prudential Land Company deals in land and Prudential Finance -- Prudential Funds deals with funds. Prudential Oil Corporation, the New York corporation, deals with this oil-petrochemical refinary complex.

Q Is Prudential Land Company a New York corporation also?

A No, sir.

Q Under the laws of what state is it incorporated?

A Delaware.

Q Under the laws of what state is Prufin incorporated?

A Delaware.

Q Under the laws of what state is Prudential Funds, Inc. incorporated?

BEST COPY AVAILABLE

A 430

A Delaware.

Q So that Prudential Oil Corporation, the plaintiff in the present action, is the only New York corporation involved?

A That is correct.

Q You have indicated that in these discussions in late October, 1962, after Mr. Coan's review, there was a discussion of the need for a company with business knowledge, as you describe it, of the oil industry, a need for customers and a need for financing. Are those two other needs that were referred to in this conversation?

A I don't understand your question.

Q Were your words "refinery" and "customers"?

A In what connection?

Q What was discussed --

A Would you ask him to read it back, perhaps?

Q I will frame another question. You indicated that in this series of meetings in October of 1962 there was a discussion of those things that had to be done, and certain things had to be found. You referred to the need to find an oil company, and you indicated that Prudential Oil Corporation, the

Exhibit A

of New York?

A My answer is that the records of the company and the general counsel would be the correct authority for the answer because it is a fact situation, and that would determine the fact. It is not a matter of my recollection, it is what it was.

Q Mr. Shippee, do you have any recollection of a discussion regarding the name of the plaintiff in a proposed action against Phillips Petroleum Company?

A Not I directly. This was a matter of lawyers drawing proper papers. That we undertook a course of action was my decision, that it was properly drawn and constructed was the work of the attorneys.

Q Did you ever hear of a proposed assignment by Prudential, a Delaware corporation, to Prudential, a New York corporation, of an alleged claim against Phillips?

A Did I ever hear of a discussion?

I don't recall that I heard of such a discussion.

MR. O'NEILL: I think we should note for the record that the complaint itself indicates that there was an assignment, Mr. MacCrate.

MR. MacCRATE: My question to Mr. Shippee is if he ever heard of such a proposed assignment.

A I don't recall that I heard of such a proposed

assignment.

Q Were the reasons of such an assignment ever discussed with you?

A Not that I recall.

MR. MacCRATE: Mr. O'Neill, may we have a stipulation for the record that Prudential Oil Corporation, the plaintiff referred to in Defendant's Exhibit 221 and 222 for identification is today known as Prudential Resources Corporation?

MR. O'NEILL: I can't so stipulate, I don't know.

MR. MacCRATE: Mr. O'Neill, I refer to the witness' sworn answers that the present corporation of Prudential Delaware is Prudential Resources Corporation.

MR. O'NEILL: I think what we were attempting to do was to clarify on the record here that there is a Delaware corporation today that is called Prudential Resources Corporation. It is the only Delaware corporation involved in this action that I know of. You used the term Prudential Delaware in asking various questions. We were attempting to answer the questions without confusing the record.

Now, there is a Prudential Resources Corporation, which as spelled out in the complaint, formerly was Prudential Equities, and prior to that was Prudential Oil

Minutes of May 2, 1975 Argument of Motion to Dismiss

jkbr

UNITED STATES DISTRICT COURT

A 433

SOUTHERN DISTRICT OF NEW YORK

PRUDENTIAL OIL CORPORATION,

Plaintiff,

-against-

PHILLIPS PETROLEUM COMPANY,

Defendant.

67 Civ. 3748

Before:

HON. CHARLES L. BRIEANT, JR.,

District Judge

New York, May 2, 1975
2:30 p.m.

APPEARANCES

GOLD, FARRELL & MARKS, Esqs.,
Attorneys for Plaintiff,
By: Thomas R. Farrell, Esq. and
Richard Urowsky, Esq., of Counsel

SULLIVAN & CROMWELL, Esqs.,
Attorneys for Defendant,
By: Robert MacCrate, Esq., of Counsel

-o0o-

Exhibit B

(Case called.) A 434

THE COURT: Gentlemen, I have a pending motion in this matter. I think probably my best procedure would be to hear the motion first, and then I am prepared to confer informally with counsel if they wish me to.

Are you ready to proceed now with the motion?

MR. Mac CRATE: We are, your Honor.

THE COURT: All right.

MR. Mac CRATE: If your Honor please, my name is Robert Mac Crate, and I appear on behalf of the defendant Phillips Petroleum Company.

The motion that we have made to your Honor was predicted in our answer to the complaint which we filed in October of 1967. Phillips alleged that Prudential New York was collusively made a party and that there was therefore no subject matter jurisdiction under 28 USC 1359. The facts as to these matters were resolved essentially by stipulation, but this was only in July of 1974. They are incorporated in the agreed draft of the proposed pre-trial order, and due to the continued pendency of defendant's October 1973 motion to strike the jury demand, no further motion was presented to Chief Judge Edelstein at that time.

However, upon the reassignment to your Honor we promptly made the motion in advance of the first hearing

Exhibit B

before your Honor.

We are moving under Rule 12(d) and 12(h)3, which expressly contemplate the Court to hear and to determine a question as to subject matter jurisdiction in advance of trial.

THE COURT: Well, I am sorry to interrupt you, Mr. Mac Crate. The Court understands that after this case was reassigned to me, that an inquiry was made informally by one of my law clerks of both attorneys, I believe, and I understand that nobody desires an evidentiary hearing on this motion, is that correct?

MR. Mac CRATE: Your Honor, this is on the basis that we believe the facts that are agreed require dismissal. If your Honor believes that an issue has been raised, we do feel that an evidentiary hearing will be necessary. But we feel that on the showing, that is, an agreed showing, that this complaint should be dismissed.

THE COURT: But you aren't asking for an evidentiary hearing.

MR. Mac CRATE: We do ask in the alternative to the grant of our motion for an evidentiary hearing, your Honor, so that the question can be once and for all resolved.

THE COURT: Off the record.

Exhibit B

A 436

(Discussion off the record.)

THE COURT: All right; well,you may continue, but before we conclude, I want to make certain that I understand -- Mr. Farrell, did you want an evidentiary hearing?

MR.FARRELL: Your Honor, our position is that there is no necessity for an evidentiary hearing, that our affidavit makes perfectly clear that there was a good reason for this assignment and transfer and that the Judge should deny the motion without an evidentiary hearing.

THE COURT: All right.

You may continue, Mr. Mac Crate.

MR. Mac CRATE: Your Honor, the sole basis for federal jurisdiction which is alleged is diversity under 1332(a). There is and has been since December 1969 a parallel State Court action with the identical allegations except for the jurisdiction allegations.

Now, plaintiff's alleged claims which Judge Edelstein has now found to be for breach of a joint venture agreement and for appropriation of business property arise primarily out of conversations and correspondence during 1962 and 1973, between Phillips and Prudential, then a Connecticut corporation. However, by the time of the first assertion of any claim, Prudential Connecticut had disappeared, and Prudential, a Delaware corporation, had

Exhibit B

A 437

taken over all of its property.

THE COURT: You know that doesn't give me a very good statement of what happened; that it disappeared and they had taken over all of the property.

I would like to know whether there was a merger, or whether there was an assignment of rights, or whether there was a dissolution, or exactly what legal form do you claim it took?

MR. Mac CRATE: There is no issue as to that, your Honor. It was reincorporated in Delaware, and all of the assets and liabilities were transferred to the new Delaware corporation, and on a share-for-share basis the stockholders of the Connecticut corporation became stockholders of the Delaware corporation.

This took place in 1965. And as of June 30, 1965, from that date to this, the alleged beneficiary holder of the claim that is here asserted has been Prudential Delaware.

In contrast, the plaintiff assignee, Prudential New York, which was formed in July of 1966, and to whom just this lawsuit was assigned, is a bare shell, the lawsuit cites only property, it never had any other assets, it has no books of account, Mr. Shippee and his secretary function as its officers and directors. Mr. Shippee is the gentleman

Exhibit B

who was on both sides of the transaction and by which the assignment was made from Prudential Delaware to Prudential New York, and he is the gentleman whose affidavit is before you in answer at this time.

Now, for the assignment, Mr. Shippee was actually on both sides of the transaction. He executed the papers for Prudential Delaware. The transfer and the receipt he executed for Prudential New York. Indicating, your Honor, the continued control and the possession of Prudential Delaware is the fact that in October 1966, three months after this assignment, it was the directors of Prudential Delaware who authorized the officers of Prudential Delaware to commence suit in the name of Prudential New York.

Similarly, after discussions, after the passage of almost a year's time before suit was actually instituted in September of 1967, it was the executive committee of Prudential Delaware who gave directions to proceed with the action, and for trial counsel to appear for Prudential New York, and this is expressed in the minutes of the executive committee meeting of Prudential Delaware for the trial counsel to work with the counsel for Prudential Delaware in commencing the suit.

Now the complaint was served in September of 1967,

Exhibit B

jkbr

but the claims that are asserted there are substantially the same claims that were asserted in May of 1966 prior to the assignment on behalf of Prudential Delaware. Annexed to the moving papers as Exhibit 3 is a document that has been marked as Defendant's Exhibit 221 for identification in the pretrial proceedings, and it is a draft complaint that was handed to Phillips back in May of 1966. What is there alleged is an action between two Delaware corporations, both doing business in New York, no federal cause of action, and it is in the Supreme Court, New York County. This action, since it was instituted, has been and remains to this day under the direct control of Prudential Delaware. It has a direct and immediate stake in the action. It has the power to compel through its 100 per cent stock ownership the delivery of any fruits to it.

On the other hand, Prudential New York was and remains without corporate substance. Its only purpose is to sue. It is in fact, your Honor, a hollow agency for collection. So that we come to the legal question of whether a corporation may invoke diversity jurisdiction simply by creating a wholly owned subsidiary under laws of another state and transferring its alleged claims to that subsidiary for collection.

Now since 1948, the controlling statute has been

Exhibit B

Section 1359, to protect the Federal Courts from manufactured assignments for suit. And we have had since 1969 an authoritative statement by the Supreme Court of the United States, speaking by a unanimous bench of eight members, through Mr. Justice Harlan, in Cramer v. Caribbean Mills, 394 U.S. 823, which is cited initially at pages 7 and 8 of our main brief.

There, the District Court had denied a motion to dismiss for lack of subject matter jurisdiction. The case proceeded to trial, to a jury, and then, after all of the effort and time devoted to the proceedings for the trial, the Court of Appeals dismissed for lack of federal subject matter jurisdiction. And the Supreme Court of the United States affirmed, and Mr. Justice Harlan made it clear that where a substantial interest is retained by an assignor, and the assignment has been in substantial part motivated by a desire to have diversity jurisdiction available, that it falls within -- these were the Court's words -- the core of Section 1359. Essentially, it is the retention of a substantial interest, plus a motive or purpose to invoke diversity jurisdiction.

Now the fact that this plaintiff is less candid than the plaintiff in Caribbean Mills cannot be the test of federal jurisdiction.

Exhibit B

What did Mr. Shippee say inhis pretrial deposition annexed to the reply affidavit, as Exhibit B?

MR. FARRELL: I didn't get a copy of that.

MR. Mac CRATE: It was served on your office, Mr. Farrell. I am sorry.

MR. FARRELL: Doesn't do any good here.

THE COURT: Don't you have an extra copy?

MR. Mac CRATE: We certainly have.

THE COURT: May I say, I don't find it myself. Must be working its way through the Xerox machines of this courthouse.

MR.Mac CRATE: I regret, your Honor -- I had understood it was here around noontime, and also after being served on Mr. Farrell at that time. I apologize. It was my intention, your Honor, that the Court would have this in advance of argument and --

THE COURT: It is quite all right, but if there is new material in here, Mr. Farrell will have to have an opportunity to give it some consideration.

MR. Mac CRATE: I appreciate that.

What I wanted to invite was the Court's attention to Exhibit B to the reply affidavit, which is an excerpt from Mr. Shippee's deposition. Mr. Shippee is the affiant whose affidavit is before your Honor. On page 913 of the

Exhibit B

deposition, the question was asked of Mr. Shippee: "Did you ever hear of a proposed assignment by Prudential, a Delaware corporation, to Prudential, a New York corporation, of an alleged claim against Phillips?

"A Did I ever hear of a discussion? I don't recall that I heard of such discussion."

And Mr. O'Neill, who was representing Prudential at that deposition, interposes: "I think we should note for the record that the complaint itself indicates that there was an assignment, Mr. Mac Crate."

To which I responded:

"My question to Mr. Shippee is if he ever heard of such a proposed assignment."

And Mr.Shippee's answer: "I don't recall that I ever heard of such a proposed assignment.

"Q Were the reasons of such an assignment ever discussed with you?

"A Not that I recall."

Your Honor will also find on page 913 the suggestion by Mr. Shippee that these matters were for the lawyers in drawing up the proper papers, so that today, in contrast to what Mr. Shippee testified in his deposition, we are given an elaborate explanation of this assignment, and we get that only from Mr. Shippee. His lawyers are quite

Exhibit B

silent. And it is an interesting thing because it was the lawyers decision in Cramer v. Caribbean Mills that was the basis for the Supreme Court of the United States holding that there was no subject matter jurisdiction and that where the lawyers had made a decision to take the necessary step to transfer a claim from a Panamanian corporation to a Texan, and to retain the right to get back 9-1/2 per cent of the proceeds of any such action, that that kind of an assignment was not one that would be recognized for purposes of diversity jurisdiction.

Now any window dressing that is put on this assignment by relating it to other matters in which these corporations were engaged is irrelevant. This is just a lawsuit. There is no separate business to be placed in another corporation. All of the notion that is advanced in the answering papers falls away as nothing, when one examines what this particular corporation was being asked to do. And it has always been the 100 per cent parent of the plaintiff that we find now has been calling the shots and is the one who benefits from any recovery. It can do with that recovery as it will.

Now, it is long recognized that assignments between related corporations must be carefully scrutinized, your Honor. And there is a line of cases cited in our main

Exhibit B

brief, commencing with Lehigh Mining v. Kelly in 160 U.S. 327, in the United States Supreme Court. That is at pages 9 and 10 of our brief; whereas here a related corporation could compel reconveyance without any consideration of what a Virginia corporation had passed to a Pennsylvania corporation in order to assert against Virginia individuals.

Similarly in Miller and Lux v. East Side Canal in 211 U.S. 293, which is at page 11 of our main brief, there are as here assets in exchange for stock.

THE COURT: You don't have to digest those cases because the Court will read them.

My understanding of them is, however, that motive for the assignment is a factor, even an assignment from a parent to a subsidiary; just the mere presence of an assignment from a parent to an otherwise naked subsidiary, if there were a proper motive or a motive unrelated to federal jurisdiction or diversity, would not necessarily trigger the the test of Miller and Lux.

MR. Mac CRATE: Your Honor, a proper motive or another motive is not sufficient in the assignment cases. There is a clear delineation in the development of the law, and Mr. Justice Harlan makes this clear in Cramer v. Caribbean --

THE COURT: May I take just a moment. I have

Exhibit B

here Greene & White which I happened to bring downstairs with me, and which I think factually is about as close as you could get to the view that you have of this case. And they say there on page 127, Greene & White Construction Company, 361 Fed. Supp., 125, where the motivation for the assignment is to vest the Federal Court with jurisdiction, the transfer will be deemed collusive, the transfer referring back to a transfer where the stockholders of the parent have the right and power to compel the subsidiary, also controlled by those same stockholders, holding the legal title to a claim through assignment, to reconvey such title to the parent without a valuable consideration; that is the equivalent for federal jurisdictional purposes of an agreement to do so.

Now, still it seems to me that motivation is a factor, and the reason I am spending a moment to discuss that with you, is, I don't understand how you can ever determine motivation on papers. It seems to me that to determine somebody's motivation, those persons having competent knowledge of the motivation or knowledge of the reincor ation would have to come in and tell us under oath, and the Court would be in a position to assess the credibility, and make the findings of whether this assignment was done with a motivation which I previously quoted to you from Greene

Exhibit B

& White, which I think is probably the best statement of this rule we have before us.

MR. Mac CRATE: Your Honor, we cite Green & White at pages 11 and 12 of our brief, and in there, in our citation from the case, we quote what the Court says, that the plaintiff invoking federal jurisdiction must bear a heavy burden, and I submit, your Honor, that any failure in a demostration of the absence of a motive to invoke federal jurisdiction, any failure must rest upon the plaintiff, and in this situation where we have Mr. Shippee saying that this was all a matter for the lawyers, and the lawyers don't come forward and say one word in the answering papers, and they put the client forward who doesn't disclaim that it was a factor, and this is the point that I sought to stress, that in an assignment case, as distinguished from a guardian or executor case, it is not that there is no complete absence of any other reason. It is simply that diversity jurisdiction was a substantial motive.

Now in this case we have a draft complaint in May of 1966; two months later we have the transfer from the Delaware corporation to the New York corporation with, as Mr. Justice Harland indicated, as the second important factor, the retention of the interest and the control. It is not an absolute transfer.

Exhibit B

THE COURT: Oh, that is quite clear, but I am just concerned in how I would make a finding which you are asking me to make, a finding of fact that they had the motivation. Their affidavits in response to your motion here, and I have not read every word and paragraph of them, but they seem to make a colorable argument that they had no collusive motivation and the president of the corporation I suppose can make such an affidavit on information and belief, he doesn't have to require the attorneys to sign an affidavit, and I am just wondering if we are not faced with a problem which in the absence of a concession or a clear showing on the record would need an evidentiary hearing because the Court would have to find, as I understnad it, two prongs to satisfy it. The first one you are clear on. You have an assignment where there is an absolute right to compel reconveyance. I don't think that will be disputed here. But the second aspect of it, whether the motivation for the assignment was to vest the Federal Court with jurisdiction, to make that kind of a finding without a plenary, evidentiary hearing, which the Court would beentitled to hold, and could make findings after hearing, but I don't see how that can be resolved in a battle of affidavits.

MR. Mac CRATE: Well, I submit, your Honor --

Exhibit B

THE COURT: Even if their affidavits aren't as good as they ought to be.

MR. Mac CRATE: This is a matter that is peculiarly within the province of the lawyer as to what will provide federal jurisdiction. The fact --

THE COURT: It is in the province of anybody who has knowledge, who has direct personal knowledge. Let us take a hypothetical case.

MR. Mac CRATE: Mr. Shippee says he has none. The affiant here says that he does not know or cannot recall the reasons for the assignment being discussed with him.

THE COURT: But they were not collusive, says he.

MR. Mac CRATE: But collusive, according to Chief Judge Kaufman, in this context is not fraud, it is not concealment, it is taking and manufacturing -- this is the word that has become popular in all of the cases under 1359 - manufacturing a federal claim.

THE COURT: When the claim arose they had diversity, didn't they?

MR. Mac CRATE: That is not clear, your Honor, because when this claim arose is in dispute.
Itwas only asserted in 1966, when they had no diversity.

THE COURT: But weren't all your transactions

Exhibit B

or claimed transactions during a period of time when they were in Connecticut?

MR. Mac CRATE: The principal transactions were with Prudential Connecticut, that is correct. But it had disappeared. There was an absolute defeasance in that case. It was the kind that has historically transferred a cause of action from one jurisdiction to the next.

THE COURT: For some totally frivolous reason unconnected with this litigation, they changed it from a Connecticut corporation to a Delaware corporation, the same as if an individual had picked up his household goods and moved to Delaware. It wasn't an assignment. It was just a reincorporation.

MR. Mac CRATE: Correct, your Honor.

THE COURT: All right.

MR. Mac CRATE: That the burden of proving jurisdiction rests with the plaintiff I think is clearly established by McNutt v. --

THE COURT: Well, please don't go into the cases. I understand your theory, and I think I understand the facts, and I think I am almost ready to hear from your adversaries.

MR. Mac CRATE: Let me just, before I sit down, make these final points, your Honor.

Exhibit B

I submit that a totally insubstantial reason is not an adequate reason to take a case out from under the agreed facts that we have here. What is advanced is the suggestion that there was some hidden motivation, that a person could always reconstruct. If a court were reduced to a highly subjective state of mind to make a decision of this character, there would be no end, and that is what your Honor is being asked to do.

You have a completely separable issue of jurisdiction. It is in no way intertwined with the facts on the merits. It is for your Honor to decide.

THE COURT: Well, I agree with that. But I have some misgivings of deciding what may be a factual issue on papers. I think I could try this in half a day. We will get this man up here and let him testify, and if anyone has knowledge, they can testify, and I think that -- of course, the plaintiffs will have to show a jurisdictional basis. That's their burden to satisfy the Court that they have a subject matter jurisdictional basis.

I think this Greene & White case is the basic authority here. Or it states the rule as best I can find it in the context of this particular type of case.

All right. Let me hear Mr.Farrell.

MR. FARRELL: Thank you, your Honor.

Exhibit B

I am going to try to confine myself to the things that appear to be bothering you, and I won't repeat so much what's in the affidavits.

THE COURT: Well, you generally accept the thought that an assignment to a wholly owned subsidiary where all or substantially all of the stock of the subsidiary continues to be owned by the parent satisfies the concept I just quoted to Mr. Mac Crate out of the Greene & White case. What I'd really like you to concentrate on is the question of motivation for the assignment to vest the Federal Court with jurisdiction.

MR. FARRELL: That is exactly what I was going to do, your Honor.

THE COURT: The other half of it I think they have shown pretty clearly.

MR. FARRELL: There's no question about it. Nobody ever doubted it. Obviously the parent can control its subsidiary.

THE COURT: And they do now, is that correct?

MR. FARRELL: Correct.

THE COURT: Your parent corporation in Delaware has all the stock?

MR FARRELL: Well, since then, your Honor, in '72, for unrelated reasons, it's been a downstream merger of

Exhibit B

a former holding company into Prudential Funds, but the answer is yes for our purposes.

THE COURT: Who now owns all of the stock of this New York plaintiff?

MR. FARRELL: Prudential Funds which was originally another subsidiary of Prudential of Delaware.

THE COURT: But Prudential Funds is a Delaware corporation.

THE COURT: It's a successor in interest of the original assignor.

MR. FARRELL: Yes, your Honor, that is of the -- yes, of the original assignor. There was what they call a downstream merger where the parent was merged into one of the subsidiaries along with all of its other assets, in around '72, well, after this case was started.

THE COURT: But you are not relying on that as having any bearing.

MR. FARRELL: No, not at all. Not at all.

THE COURT: All right.

MR. FARRELL: What I would like to point out is that Mr. Mac Crate has, I think, overstated the rule, and I agree with Mr. Mac Crate only in one respect, in that we don't need an evidentiary hearing, and I will explain why.

The last word of the Second Circuit on this

Exhibit B

particular issue -- and Mr. Mac Crate has attempted to distinguish the case on the ground it involved a fiduciary instead of an assignee -- but Judge Kaufman's language was quite clear, and he said that the purpose of Section 1359 was to prevent agreements whose primary aim, primary aim was to --

THE COURT: Is that different than motivation?

MR. FARRELL: No, but your Honor, the showing that has to be made -- and I think this is what Mr. Mac Crate has to make although I don't want to get into the thing about burden of proof -- is that our primary aim was to vest this Court with jurisdiction.

Now, what you had here was the following: You had a situation where one of the businesses of the original Prudential Delaware was very successful. It was the offer management of drilling and gas leases. That was an extremely successful operation, and it kept expanding.

You also had a number of other small contingent, inchoate, whatever claims. The thing with Phillips was for a while an interest, then it became a claim and finally became a lawsuit. But the fact was that that had been in that corporation for a long time. In addition there was an interest in a piece of property in Madrid, Spain, and it had a number of other small interests which couldn't

BEST COPY AVAILABLE

Exhibit B

really very well been valued.

The situation then arose that they thought that they would have a public offering of the stock of whatever corporation held the drilling funds, which was the successful operation, and they would turn Prudential Delaware, whose name was then changed to Prudential Equities, into a bare holding company.

As a result they dropped down -- if you take a chart with the parent at the top -- they dropped down about four or five corporations, one Prudential New York, for the Phillips claim --

THE COURT: Why New York?

MR. FARRELL: Your Honor, our office was there. That's exactly where we had our office. Mr. Mac Crate's got to argue that we have got to go out of state to form a corporation where our office, our officers, our counsel, our books are all in New York.

THE COURT: What were they doing in these offices? They had nothing but a lawsuit according to the papers.

MR. FARRELL: Your Honor, according to the papers, by the time we got to 1966 they had nothing but a lawsuit but it was still a claim, and you could not have that claim in the corporation that was going public.

THE COURT: When the assignment took place,

Exhibit B

what else was in the possession or the scope of activities of the assignee?

MR. FARRELL: Well, we contend, your Honor, that we still had an interest in a joint venture.

THE COURT: Yes, you have repudiated that and are suing them.

MR. FARRELL: Not for 14 months, your Honor, after this assignment did we sue them.

THE COURT: What is this business about tendering a complaint to them?

MR. FARRELL: We did earlier, we did.

THE COURT: So when you did that that meant that you had a dispute?

MR. FARRELL: Sure, we had a dispute, we knew we had a dispute, but we thought we might be able to settle it and besides which we were trying, during all this period, to work something out. In other words, there was no limited assignment of a claim. If you read these papers it is quite clear we assign any interest in that Phillips Puerto Rico project.

THE COURT: Well, I can't bring my eyes to the practicalities.

MR. FARRELL: Well, your Honor, whether or not there was nothing there but a claim, the fact remains that

Exhibit B

if in fact we wanted to make separate corporations for each of our interests in order that one which had the most prosperous business could offer stock to the public, we were not required, and I don't think there is any case that says that, to form a corporation which would destroy diversity. Once we had a motive to form a corporation, to drop all these interests --

THE COURT: But you had no diversity to begin with.

MR.FARRELL: That is correct, your Honor. Well, to begin with, not to begin with. After Connecticut there was no diversity for a period.

THE COURT: You wilfully and knowingly, as the expression goes, took your operation from Connecticut to Delaware?

MR. FARRELL: Right, correct.

THE COURT: When you did that you extinguished diversity?

MR. FARRELL: Correct.

THE COURT: We are not talking about destroying diversity. We are talking about recreating it.

MR. FARRELL: Your Honor, I must say --

THE COURT: When I say you, I don't suggest that your own firm was in any sense involved in that type of thing.

Exhibit B

MR. FARRELL: No, it was not. But, your Honor, what really you have to say, I think even to have a hearing in this case, is that 1359 must be read that even though you have a perfectly proper legitimate reason, business reason to transfer an asset or a claim to a subsidiary --

THE COURT: In another state?

MR. FARRELL: You must --

THE COURT: What is the proper --

MR. FARRELL: Excuse me, your Honor -- you must choose a state outside of the offices of that very corporation. In other words --

THE COURT: Where is the business reason for transferring it to Connecticut, to New York, rather?

MR. FARRELL: The business reason for transferring it to another corporation was --

THE COURT: That he will buy. Tell me why New York.

MR. FARRELL: Because our books were there, our records were there --

THE COURT: That doesn't wash.

MR. FARRELL: Our office was there. What was the reason to go to Delaware? We could have gone to any of the 50 states, your Honor. But we are in New York, our counsel is in New York, our office is in New York. That is not

Exhibit B

the only New York corporation we formed. We formed another New York corporation at the same time which had nothing to do with Phillips. We had a Puerto Rican corporation. And we had a Spanish corporation as well as the Delaware corporation.

THE COURT: But they all had business, didn't they?

MR. FARRELL: Well, no. The Puerto Rican corporation was formed to try and work this thing out with Phillips, and that never got too much of much either. Some of them did, some of them didn't, your Honor. As I say, there were a number of inchoate claims or interests, and they were all assigned to different coprorations. And the New York corporations were Prudential Land, which was to hold some land interests in these drilling funds, and Prudential Oil Corporation, which received the Phillips matter. The Spanish corporation was for the property in Madrid, and the Puerto Rican, the other Puerto Rican corporation was, or the Puerto Rican corporation was for what was hoped to have been a satellite plant, Phillips Corporation. We had, in other words, five subsidiaries, one of which was a Delaware corporation, the others of which weren't. The public corporation was the Delaware corporation.

Exhibit B

THE COURT: All right. And you believe I can dispose of these matters on these papers favorably to your client without having an evidentiary hearing, that's your position?

MR. FARRELL: It is, your Honor, it is. I think that as long as --

TEH COURT: In Judge Tyler's words, counsel eschewed an evidentiary hearing.

MR. FARRELL: Your Honor, if you are now telling me that you don't think you can decide it without an evidentiary hearing, I am not going to --

THE COURT: I'd have to read the papers again.

MR. FARRELL: But my position is, your Honor, that it beggars belief that a corporation would go through a reorganization in 1966 of the size of this reorganization when its only motivation was to put the Phillips matter into a New York corporation. I also say that once we had a legitimate reason -- I think Greene & White even supports that -- once we had a legitimate reason to make the assignment, we didn't have to choose a corporation which would be incorporated in the same state as Phillips simply because that assignment would then give us diversity jurisdiction.

THE COURT: But if you went out of your state it seems to me you had to have a business reason for doing

Exhibit B

so and the one you come up with, that an office and books and records and so forth of what the papers indicate is a company that had a chose in action, they have a lawsuit. How many people worked in this office?

MR. FARRELL: Their officers were combined with the other officers.

THE COURT: How many employees did they have there?

MR. FARRELL: Your Honor, I don't know that.

THE COURT: Did they have any?

MR. FARRELL: They probably had a couple of officers.

THE COURT: I'd like to know the answer, how many hours they worked, what their salaries were, what business they were doing. It looks to me as if youhad a shell corporation owning a claim.

MR. FARRELL: That is true, but if it were true, your Honor, if it were true, that would dispose only of the first prong, not the second prong. Now, you said several times, and I'd like to address myself to that, when you go outside of your state -- now, we are not going outside of our state. The Delaware corporation didn't have its main office in Delaware. It was formed in Delaware probably for the same reason that Phillips was formed in Delaware, which

has its main office in Bartlesville.

THE COURT: Where was its main office?

MR.FARRELL: In New York.

THE COURT: The parent?

MR. FARRELL: Yes, and that is the thing, apparently, I didn't get across. Everybody was in New York. The parent and all the subs had their offices in a single suite at Rockefeller Plaza in New York. Actually to have formed a Delaware corporation under those circumstances would have been to go out of the state. The corporation was formed where the officers were, and where the counsel was, and where the physical -- theonly physical assets that any of these corporations had were all in New York. We have an official Delaware address for the parent. That was it. So nobody went out of the state. And I really want to emphasize that, because I think you twice asked why we went outside of the state.

THE COURT: So I didn't understand the answer the first time.

MR. FARREL: I am sorry, your Honor. I just want to be sure you did now.

THE COURT: I think what I ought to do, I ought to give you some time to read the reply affidavit, and if you want to submit any additional papers which would be in

Exhibit B

response to it, since you didn't get it until the argument began, I will give you a reasonable time to do that.

MR. FARRELL: Thank you.

THE COURT: Will a week be enough?

MR. FARRELL: Oh, yes, your Honor.

THE COURT: If you find earlier that you don't want to respond to it, then please write a note to your adversaries with a copy to the Court or vice versa and tell me you don't want to do anything further. And I will reserve decision, and read all these papers more fully, they being somewhat lengthy, and see what it looks like.

MR. Mac CRATE: Might I, your Honor, just add one word in reply to Mr. Farrell's statement with respect to the facts so that it is clear --

THE COURT: Mr. Farrell is standing on the papers.

MR. Mac CRATE: He perhaps overstated the papers.

THE COURT: If he did, he can't help himself by doing so. The Court will read the papers.

MR. Mac CRATE: I simply wanted to point out --

THE COURT: How do you say he overstated it?

MR. Mac CRATE: Prudential Delaware never sought to go public. Prudential Delaware made a transfer to a Delaware corporation and it was another Delaware corporation that went public. There wasno reason,

Exhibit B

there was no reason why this claim had to go out of Prudential Delaware. It could have stayed right in Prudential Delaware, and not have affected the company that went public two years later. This going public was not until the end of 1968. And this is the kind of problem we get involved in once the ingenuity of counsel is brought to bear to explain what has gone on. We had a very simple time sequence of showing a complaint, making the transfer, and then bringing a claim in the Federal Court.

MR. FARRELL: Your Honor, I think I was perfectly clear on that. The reason we did it was that Prudential Delaware was converted into a bare holding company. I said that, we dropped off in a Delaware corporation, the drilling funds, and we dropped off into other corporations, some New York, some Puerto Rico, some others, the various claims, leaving Prudential Delaware as a holding company, which was part of the plan. And this was -- incidentally --

THE COURT: Who held the holding company?

MR. FARRELL: The original stockholders of Prudential Delaware. That was the one that was merged down stream, your Honor, earlier in my argument.

THE COURT: That is all in the papers, is it?

MR. FARRELL: Not the down stream merger, because that happened in '72.

Exhibit B

THE COURT: I have to test my subject matter jurisdiction here as of the present minute, and also what they did -- you are asking me to take this whole picture and draw an inference from it, and if you are going to make that request, then I have to have the whole picture to draw the inference. I am told, from what I understand, that this company had a plan of reorganization whereby they wanted to get their most profitable components of their business affairs in a separate vehicle and take it public --

MR. FARRELL: Right, that is right.

THE COURT: -- put the rest of their non-public matters in a separate vehicle to continue to own them.

MR. FARRELL: Right.

THE COURT: And that that is why they did these things and not because of a collusive desire to vest jurisdiction in this court.

MR. FARRELL: That is correct, your Honor.

THE COURT: I'd have to see the whole picture to draw any such inference, so it ought to be made clear if it is not. I am not saying it is not because I have not been through these papers with a fine toothcomb because, you know, it would be a waste of my time. You come in here and argue the case, you might agree that you need an evidentiary hearing, you might agree to stipulate to

something that isn't in the papers, you might do all kinds of other things which would make it unproductive for me so I listen to the argument, and then I am going to --

MR. FARRELL: Your Honor, I had suggested in my papers -- I had two things -- first I will -- after I have read Mr. Mac Crate's papers -- advise you whether I want to reply, but I will also bring this up to date, to bring in the down stream merger which quite frankly I didn't think was appropriate because I think jurisdiction is tested at the time the suit is started --

THE COURT: Quite the contrary.

MR. FARRELL: Well, your Honor, in any event, this down stream merger, the motive would still be the same, it would remain the same, but I will supply that.

THE COURT: All right.

MR. FARRELL: However, in our brief of the second point, on the evidentiary hearing, we had suggested that the matter be submitted to the jury. Now, that's perfectly appropriate --

THE COURT: That wouldn't be our ordinary practice

MR. FARRELL: Your Honor, there are cases that authorize that practice and I might point out that the issue of the jury --

THE COURT: You are the one who didn't want a jury

Exhibit B

at all.

MR. FARRELL: No, I wanted the jury.

THE COURT: It was your motion?

MR. Mac CRATE: It was my motion, your Honor.

MR. FARRELL: In fact, that is exactly my point. I think that can appropriately be put to the jury. There are cases in my brief in which that was done.

THE COURT: Am I correct in concluding that if they can get you across the street, they can take your jury trial away from you?

MR. FARRELL: Yo are c rrect in concluding that, but I am not sure it makes a difference.

THE COURT: It is a 1967 case, with jurisdictional motion raised in 1975.

MR. FARRELL: Your Honor, I must say that though Mr. Mac Crate, and I don't want to waste time calling names here --

THE COURT: No, don't,because you have been together fora long time.

MR. FARRELL: I think this motion has been brought on at the very last minute. All these things were known --

THE COURT: He has the right to do it, all jurisdictional matters are never waived.

Exhibit B

MR. FARRELL: I understand, your Honor, but I think that may give us some idea of what he thinks of his own motion.

THE COURT: All right, I am reserving decision, and is a week enough?

MR. FARRELL: Yes, your Honor.

THE COURT: All right.

Now perhaps you gentlemen would confer with me briefly inside for a few minutes. I have to go upstairs. But I'd be happy to see you.

(Discussion in the robing room off the record.)

- - -

Exhibit B

Supplemental Affidavit of Thomas R. Farrell, Sworn to May 7 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 468

PRUDENTIAL OIL CORPORATION,

Plaintiff,

-against-

PHILLIPS PETROLEUM COMPANY,

Defendant.

67 Civ. 3748 (CLB)

SUPPLEMENTAL AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

THOMAS R. FARRELL, being duly sworn, deposes and says:

1. I am a member of Gold, Farrell & Marks, attorneys for the plaintiff. I make this affidavit in response to the reply affidavit of Robert MacCrate, which I did not receive until the oral argument of defendant's motion to dismiss the action pursuant to 28 U.S.C. §1359.

2. Mr. MacCrate attaches as exhibits to his affidavit four pages of transcript of the deposition of Nathan Shippee which Mr. MacCrate claims are in contrast to Mr. Shippee's affidavit. In fact, however, Mr. Shippee's testimony is entirely consistent with his affidavit. He testified (Exhibit A to MacCrate affidavit):

> "In the interim period the business [of Prudential Delaware] took on many different aspects, including real estate, drilling funds, and we reorganized it for the sole purpose of taking the individual businesses under representative management and representative names, so that the Prudential Land Company deals in land and Prudential Finance -- Prudential Funds deals with funds. Prudential Oil Corporation, the New York corporation, deals with this oil-petrochemical refinery complex."

Exhibit B

BEST COPY AVAILABLE

This is precisely what he said, in greater detail in his affidavit in opposition to defendant's motion to dismiss.

3. Mr. MacCrate's argument that Mr. Shippee's testimony concerning the state of incorporation of Prudential Land Corporation differs from the actual documentation is hardly worthy of comment. The actual certificate of incorporation, which is annexed to his affidavit as Exhibit Q, establishes that Prudential Land Corporation is a New York corporation. Mr. Shippee's testimony to the contrary, without the document before him, is simply mistaken.

Exhibit B

4. In fact, the entire thrust of Mr. MacCrate's argument is misplaced. Obviously, when this motion was made, Mr. Shippee had to review the relevant contemporaneous documents in connection with the preparation of his affidavit in opposition to the motion. These documents establish in detail the total Prudential Delaware reorganization and its business purpose. Mr. MacCrate ignores the fact that the contemporaneous documents support Mr. Shippee's affidavit at every turn and are uncontroverted matters of record.

5. Finally, at the argument of the motion, a question arose with respect to a subsequent "downstream" merger which occurred on March 21, 1973, of Prudential Equities (Prudential Delaware) into Prudential Funds in order for shareholders of the parent to have publicly tradeable shares.

6. This merger is completely irrelevant on this motion, since the law is clear that diversity is determined as of the commencement of the action. See Rosado v. Wyman, 398 U.S. 397, 405, n.6 (1970) and cases there cited; see also Wright, Law of Federal Courts §28 (2nd ed. 1970) and cases there cited.

7. In any event, the 1973 merger changed nothing with

respect to the issue to be decided here because after the merger, plaintiff, Prudential New York, remained a wholly-owned subsidiary of a Delaware corporation and all of the Prudential corporations, including the Delaware parent, continued to operate from New York, which is, was and had always been their principal place of business since October 1962 and the state where their management and counsel were and are all located.

Thomas R. Farrell

THOMAS R. FARRELL

Sworn to before me this
24 day of May, 1975.

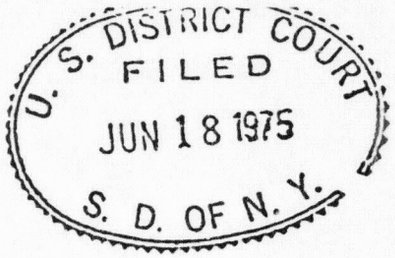
Judith S. Holes

JUDITH S. HOLES
Notary Public State of New York
41-7227 - Qual. in Queens Co.
Commission Expires March 30, 1977

Opinion of Judge Brieant, June 18, 1975,

Denying Defendant's Motion to Dismiss

A 471



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

PRUDENTIAL OIL CORPORATION,

Plaintiff,

-against-

PHILLIPS PETROLEUM COMPANY,

Defendant.

- -X

67 Civ. 3748-CLB

MEMORANDUM DECISION

#42612

Brieant, J.

By its complaint, filed on September 27, 1967, more than seven and one-half years ago, plaintiff, a New York corporation, sued defendant, a Delaware corporation having its principal place of business in Oklahoma, for relief upon four separate claims or causes of action. Most of the facts relied on occurred during the period 1961 to 1963.

All claims pleaded seek equitable relief and/or damages under New York law. As successor by a chain of assignments, hereinafter mentioned, from Prudential Oil Corporation, a Connecticut corporation, hereinafter "Prudential Connecticut", plaintiff seeks to enforce its rights under a claimed joint

venture for the establishment of an oil refinery and petrochemical facility in Puerto Rico. It alleges that its assignor, Prudential Connecticut, disclosed confidential proprietary information to defendant, and took and forebore from taking a variety of actions, in reliance on the alleged joint venture, and thereafter defendant appropriated the benefits of the joint venture for its own account. The legal theory of the claims pleaded has been stated variously as an equitable action to impress a trust, or for an accounting, or an action for damages as a result of an intentional tort arising out of misappropriation by defendant for its own use of details, specifications, ideas, concepts, innovations, information contacts, engineering data and designs furnished to defendant in trust and confidence, to be used solely in furtherance of the joint interests of the parties, or all of the above.

The relief requested includes (1) an accounting of the joint venture and division of the respective rights and interests of the parties; (2) impressing a trust on defendant's property; and (3) a judgment directing payment over to plaintiff of its rights in the venture.

No federal claims are pleaded, and the sole basis for jurisdiction is diversity of citizenship between the parties pursuant to 28 U.S.C. §1332(a).

For a more detailed factual exposition of the issues in this litigation, reference should be had to the memorandum decision dated April 4, 1975 filed herein by Chief Judge Edelstein, denying defendant's motion to strike plaintiff's jury demand. ____F.Supp. ____.

As noted, plaintiff shows (Complaint, ¶1) that it

> "brings this action as assignee of all the right, title and interest to the claims asserted herein of Prudential Equities Corp., a Delaware corporation, which in turn was a successor in interest and assignee of the entire business, assets and properties of Prudential Oil Corporation, a Connecticut corporation."

The answer, filed October 20, 1967, pleads as a second affirmative defense, that "the court has no jurisdiction over the subject matter of the action pursuant to 28 U.S.C. §1359."

On January 25, 1971, defendant filed in this Court its first series of interrogatories directed toward issues of federal

jurisdiction. On April 28, I971, plaintiff filed answers to these interrogatories in this Court. Apparently, insofar as can be determined, nothing further was done with respect to defendant's second affirmative defense until April 3, 1975, when defendant moved for the first time for an order pursuant to Rule 12, F.R.Civ.P., dismissing the action "for want of subject matter jurisdiction pursuant to 28 U.S.C. §1359." During the intervening years extensive discovery was held by both parties.

Pursuant to a resolution unanimously adopted on March 3, 1975 by the Court, all civil cases filed on or before June 30, 1972, which have not been tried or otherwise disposed of, are to be tried during the period June 1 through July 11, 1975, and to effectuate this purpose, this litigation was reassigned to me on March 14, 1975 for immediate trial.

At our hearing held May 2, 1975, the taking of evidence on the issues raised by the motion was waived. The facts pertaining to subject matter jurisdiction are not in dispute, although there is substantial controversy with respect to the inferences to be drawn from those undisputed facts.

Defendant contends that the present plaintiff, referred to for convenience as "Prudential New York," "had been collusively made (sic) a party to this suit," and that consequently subject matter jurisdiction was wanting under the provisions of 28 U.S.C. §1359. That latter statute provides as follows:

> "A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court."

The parties prior to July 1974 had developed a "Statement and issue concerning jurisdiction" for a proposed pre-trial order. It is clear that Prudential Oil Corporation, a Connecticut corporation, was incorporated in that State in 1959 and until October 1962, maintained its principal place of business at Greenwich, Connecticut. Thereafter, Prudential Connecticut had its principal place of business in New York.

Prudential Connecticut had been formed by Edward J. Willey and Nathan M. Shippee "for the purpose of offering for sale participations in administered oil and gas drilling exploration and development programs." (¶9, Affidavit of Nathan M. Shippee, filed April 29, 1975).

Early in 1965, Prudential Connecticut was reorganized as a Delaware corporation, also under the name of Prudential Oil Corporation (hereinafter "Prudential Delaware"). By the terms of the reorganization, Prudential Connecticut was dissolved, all of its assets, liabilities and goodwill were assigned to or assumed by Prudential Delaware, and Prudential Connecticut's shareholders received one share of Prudential Delaware stock for each share of Prudential Connecticut previously owned.

In the Spring of 1966, the board of directors of Prudential Delaware approved the formation of two subsidiaries: America House, Inc., a Spanish corporation, the purpose of which was to develop a shopping center and office building complex in Madrid, Spain; and Prudential Polymer Co., a Puerto Rican corporation, for the "purpose of engaging in activities in connection with the Phillips petrochemical plant complex being constructed in Puerto Rico." (¶16, Shippee Affidavit, ibid).

In May of 1966, a draft of an unfiled, proposed complaint entitled in the Supreme Court of New York, New York County (Defendant's [Pre-Trial] Exhibit 221), was shown to one of defendant's officers. The draft complaint sought an accounting

and damages for breach of fiduciary duties based on claimed wrongful acts of the defendant with respect to the Puerto Rican venture. This complaint was never served or filed, but was employed in discussions with defendant looking towards obtaining performance of the claimed joint venture agreement by Phillips, or a settlement.

In the summer of 1966, Prudential Delaware engaged in further corporate reorganization. On June 29, 1966 Prudential Delaware transferred to its wholly owned Delaware subsidiary, Prudential Drilling Funds, Inc. ("Prudential Funds"), all of its assets relating to its business in the management of oil and gas drilling ventures. It was contemplated that Prudential Funds would make a public offering of unit participations in oil and gas exploration and drilling programs and that the public offering could be accomplished more readily if the offeror had a clean balance sheet, separated from any of Prudential Delaware's other ventures. Prudential Funds had been incorporated on December 21, 1965, but did not begin business until the transfer. On July 13, 1966, effective July 15, 1966, Prudential Delaware changed its name to Prudential Equities Corp., supposedly to reflect more

accurately the passive, holding company quality of its post-reorganization operations.

As part of the same 1966 reorganization, plaintiff here, Prudential Oil Corporation, a New York corporation ("Prudential New York"), was incorporated on July 12, 1966 as a wholly-owned subsidiary of Prudential Equities Corp. On July 13, 1966, Nathan M. Shippee, Chairman of the Board of Prudential Delaware and incorporator of Prudential New York, elected himself and Patricia Morel, his secretary, as directors of Prudential New York. The directors elected Shippee to be President and Treasurer and Morel as Vice President and Secretary of the New York subsidiary. Also on July 13, 1966, Shippee, acting on behalf of Prudential Delaware, conveyed and assigned to Prudential New York the use of the name "Prudential Oil Corporation", and Prudential Delaware's interest in the joint venture with Phillips in the petrochemical complex in Puerto Rico, together with any "claims, rights or causes of action accruing or arising from any of the foregoing." Shippee, acting on behalf of Prudential New York, executed an instrument assuming the liabilities and obligations of the Delaware corporation in connection with the Puerto Rican venture.

At a meeting of the board of directors of Prudential Equities Corp., (Delaware) on September 11, 1967, Shippee reported to the board that efforts to settle the dispute with Phillips regarding the Puerto Rican venture had failed and that Prudential New York had no alternative but to commence suit against Phillips. The board of Prudential Equities authorized the officers of Prudential New York to retain counsel to work with counsel for Prudential Equities to prosecute an action against Phillips. (Minutes of the Meeting of the Executive Committee of the Board of Directors of Prudential Equities Corp., September 11, 1967, Exhibit 2 to Affidavit of Robert MacCrate, Esq., sworn to April 3, 1975).

Section 1359 of Title 28 was enacted to prevent the contrivance of federal diversity jurisdiction by means of assignment and bars federal jurisdiction in any "civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court." 28 U.S.C. §1359. In particular, under §1359, "[a] corporation cannot get into federal court merely by transferring its claim to a subsidiary, incorporated in some other state chosen with diversity in mind...." C. Wright, Federal Courts §31, at 102 (1970).

Kramer v. Caribbean Mills, Inc., 394 U.S. 823 (1969), holds that a federal district court lacked subject matter jurisdiction by reason of §1359 where a Panamanian corporation assigned its interest in a contract with a Haitian corporation to an American attorney for purposes of collection. The Court found that the assignment was "improperly or collusively made" since the attorney paid one dollar as consideration for the assignment and re-assigned 95% of the proceeds of the collection to the Panamanian corporation. There, it was admitted that a substantial [subjective] motive for the assignment was to create federal diversity jurisdiction. See also Miller & Lux, Inc. v. East Side Canal & Irrigation Company, 211 U.S. 293 (1908).

Green & White Construction Company, Inc. v. Cormet Construction Company, 361 F.Supp. 125 (N.D. Ill. 1973) applied §1359 where an Illinois subsidiary assigned its claim to its Ohio parent corporation and thereby created diversity of citizenship as against an Illinois defendant. The Court observed that in transactions between a parent and wholly-owned subsidiary, the assignor corporation retained an interest in the claim because reassignment could be effected at will, holding:

> "Corporate formalities should yeild to realistic analysis, and it is obvious that when a wholly-owned subsidiary assigns a claim to its parent, just as in the reverse situation, the same set of stockholders running both corporate forms can transfer title to that claim freely between them. In each case the transferor, whether it is the parent or the subsidiary, realistically retains a substantial pecuniary interest in and power over the outcome of litigation which it assigns to the other. The rationale of Miller & Lux [211 U.S. 293 (1908)] prohibits such a transfer if made for the purpose of obtaining federal jurisdiction, regardless of whether it is made in the first instance by the parent or the subsidiary. While it is conceivable that a subsidiary could prove that an assignment was made to its parent, or vice versa, for legitimate commercial reasons independent of the desire to litigate in a federal court, it must bear a heavy burden of proof since the close relationship between parent and subsidiary necessarily presents opportunities for the collusive manufacture of such reasons." 361 F.Supp. at 128.

As the Court noted on the hearing of this motion, the test for identifying collusive assignments is two-pronged. The first inquiry is whether the assignment is "of a transactional type which places nominal plaintiffs in a position to assert the real interest of another? This standard is objective and functional." Farrell v. Ducharme, 310 F.Supp. 254, 258 (D.Vt. 1970). An assignment by a parent to its wholly-owned subsidiary, where as a matter of law an absolute right to compel reconveyance always exists,

clearly places the assignee plaintiff in such a position. The second inquiry is whether the particular transaction was designed to acquire diversity jurisdiction. The standard here is subjective and "minor reasons born primarily in the light of hindsight ... advanced before the court to camouflage an [assignment] where the only substantial purpose was the creation of jurisdiction" will not satisfy the edict of §1359. Farrell v. Ducharme, supra, 261.

But if the assignment was made for a bona fide business purpose, wholly apart from acquiring federal jurisdiction over the instant claim, then it was not "collusively made ... to invoke [federal] jurisdiction." 28 U.S.C. §1359. See Henley & Co. v. Miller Golf Equipment Corporation, 300 F.Supp. 872 (D.P.R. 1969); National Surety Corporation v. Inland Properties, Inc., 286 F.Supp. 173 (E.D. Ark. 1968).

As noted, in 1966, Prudential Delaware engaged in a comprehensive plan of reorganization and inter-corporate assignments which had a bona fide business purpose, namely to facilitate an intended public offering of unit participation shares in its oil and gas drilling programs. In order to make Prudential Funds appear to be a more desirable investment. Prudential Equities (Prudential

Delaware) created several single-purpose subsidiaries and assigned to each one a particular project that had been initiated by the parent corporation. In particular, Prudential Delaware intended to dissociate Prudential Funds from its more speculative ventures, such as its claimed interest in the Phillips petrochemical plant operation.[1/] In National Surety Corporation v. Inland Properties, Inc., supra, the Court found a sufficient business purpose, and an absence of collusion to fix jurisdiction, where an assignment of title to foreclosed property was made by a corporation, which was required to borrow heavily and did not want its balance sheet to reflect investments in fixed assets, to a corporation owned by a person associated with the assignor corporation, although the sole consideration for the assignment was a mortgage on the property. The desire of a corporation to make its balance sheet appear more simple and attractive to lenders and investors is a legitimate commercial concern present in this case, which negates any inference of a collusive assignment to create diversity.

The selection of New York as the state of incorporation for this subsidiary had a substantial purpose, quite apart from its litigation consequences. Prudential New York had only one asset,

the right, if any, to participate in the Puerto Rican petrochemical plant venture with Phillips or to share the proceeds of that operation. Until such time as the differences between Phillips and Prudential were resolved, whether by negotiation or by litigation, it was unlikely that Prudential New York would require anything more than the caretaker efforts of the staff of the parent corporation which had its principal place of business in New York. From 1962 on, Prudential Connecticut and its corporate successors all had their principal places of business in New York.

On the same date that Prudential New York was incorporated, Prudential Land Company, Inc., another wholly-owned subsidiary, was incorporated in New York with the stated purpose of engaging in the acquisition and management of real property. Furthermore, Prudential Delaware had already formed Prudential Polymer, a Puerto Rico corporation, "for the purpose of engaging in activities in connection with the ... Phillips project." (Minutes of the Meeting of the Board of Directors of Prudential Delaware, April 27, 1966, Exhibit J to Shippee Affidavit, filed April 29, 1975).

The entire course of Prudential Delaware's activities commencing in 1966 evidence an intention to effect a comprehensive plan of reorganization, designed to compartmentalize the various undertakings of Prudential Delaware and to isolate them from the proposed activities of Prudential Funds.

In sum, it appears that Prudential Delaware had a valid business purpose for making this assignment and that its selection of Prudential New York as the corporation to administer its rights in the claimed joint venture was one of several options reasonably available to Prudential's management, which would have had the concurrent effect of conferring federal diversity jurisdiction. This Court will not attempt to test this exercise of business judgment by wisdom acquired after the event.

Moreover, the assignment was made on July 13, 1966, some fourteen months prior to the commencement of this action. Although a draft complaint entitled for filing in New York state court had been prepared at the time that the assignment was made, plaintiff

did not commence this action until a significant period of time had elapsed after the assignment.

It was not until September 11, 1967 that Shippee informed the Prudential Delaware Board of Directors that resolution of the dispute with Phillips had become impossible. It may be inferred that, during this fourteen month hiatus, there remained some expectation that amicable resolution of the dispute could be achieved, possibly on terms that would have permitted Prudential to participate actively in the Puerto Rican venture.

Under the circumstances of this case, the Court does not attach great significance to the fact that the sole asset of Prudential New York is its claim here, and that its sole current business activity is the prosecution of this action, because this was not the necessary consequence at the time the assignment was made. The commercial situation presented here differs markedly from a naked assignment by a parent corporation to a dummy subsidiary, incorporated on the eve of litigation with a view to obtaining federal jurisdiction. Cf. Greater Development Company of Connecticut, Inc. v. Amerlung, 471 F.2d 338 (1st Cir. 1973).

Indeed, this plaintiff, if desiring to collude, was so situated that it could have clothed the New York subsidiary with sufficient unrelated activities had it sought to do so. Accordingly, the Court finds that there is diversity jurisdiction, and that federal jurisdiction here has not been obtained by means of a collusive assignment, as prohibited by 28 U.S.C. §1359. Defendant's motion to dismiss the complaint for lack of subject matter jurisdiction is denied.

In reaching the conclusion that the assignment was not collusive, this Court has drawn inferences from uncontested facts demonstrated by admissions, answers to interrogatories, concessions of counsel made in Court, and affidavits, the veracity of which are not seriously traversed. In doing so, we are reaching conclusions from facts, rather than finding facts. Under the latter circumstance, our determination would be valid, and binding in the event of appellate review unless "clearly erroneous." Rule 52(a), F.R.Civ.P. See Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 123 (1969); Biderman v. Morton, 507 F.2d 396 (2d Cir. 1974). But here, an appellate court will be equally able to draw the inferences. As the Court of Appeals noted in Dopp v. Franklin

National Bank, 461 F.2d 873, 879 (2d Cir. 1972):

> "This is not a case ... where there was an evidentiary hearing below and the credibility of witnesses played an essential part in the district judge's determination. We are in as good a position as the district judge to read and interpret the pleadings, affidavits and depositions and thus have broader discretion on review."

This presents a difficult problem for both parties to this action, neither of which has requested an evidentiary hearing. The fact situation here is complex, affecting events which occurred many years ago. It would reflect poorly on the administration of justice if these parties engaged in an extensive trial of the underlying issues, the outcome of which later, upon appellate review of the final judgment, turned out to be void for want of subject matter jurisdiction. The situation may present a proper circumstance for appellate review of this interlocutory order, and the Court will, if requested, certify the question of subject matter jurisdiction for an interlocutory appeal pursuant to 28 U.S.C. §1292(b).

Furthermore, the Court renews its suggestion made to the parties at a prior informal pre-trial conference, that this

action should be discontinued without prejudice and without costs, and the parties should pursue their pending litigation in the New York State Supreme Court, where all of the same issues may be litigated without any question as to the subject matter jurisdiction. Unfortunately the latter course may present a tactical problem because of the possibility that plaintiff could be denied a jury trial in that court, as a result of having joined in a single lawsuit, equitable claims and claims for money only. Cf. New York CPLR §4101 and Cogswell v. New York, New Haven & Hartford Railroad Co., 105 N.Y. 319 (1887) (suggesting that such joinder waives entitlement to a jury trial as a matter of right). The parties if so advised, undoubtedly could stipulate for trial by jury, or obtain the assent of the New York Supreme Court to try the case there by jury.

Further, and in closing, it must be observed that the problems raised here, will, if an interlocutory appeal is certified, prevent trial of this case during the period required by the Plan for the Disposition of Old Cases adopted by this Court, previously mentioned.

Settle order on five (5) days notice.

Dated: New York, New York
June 17, 1975

CHARLES L. BRIEANT, JR.

CHARLES L. BRIEANT, JR.
U. S. J.

F O O T N O T E

1. Obvious to the Court, although not asserted in so many words at the argument, is a realization on the part of Prudential's sophisticated management, that before it could offer the drilling units to the public, it would have to comply with applicable provisions of the Securities Act of 1933, and "blue sky" laws in effect in various states. Almost without exception, such compliance requires disclosure to the potential investor of the certified financial statements of the issuer. A financial statement which contained reference to claimed participation in a joint venture disavowed by the purported joint venturer, and open to litigation, would present great difficulties in effecting compliance by full and fair disclosure without over-stating or understating the value of the asset, or misleading with respect to the controversy with Phillips, and would raise questions in the minds of those officials charged with enforcing such disclosure requirements. Problems of that sort are not likely to smooth the way for sale to the public of oil and gas drilling units, which have nothing to do with the Puerto Rican refinery.

Order of the District Court, July 7, 1975, Denying Defendant's Motion to Dismiss and Certifying the Question of Subject Matter Jurisdiction for Interlocutory Review Pursuant to 28 U.S.C. sec 1228 (B)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

PRUDENTIAL OIL CORPORATION, :

Plaintiff, :

-against- :

PHILLIPS PETROLEUM COMPANY, :

Defendant. :

- x

A 491

67 Civ. 3748 (CLB)

ORDER

Defendant having moved this Court, upon the files and pleadings in this action, for an order pursuant to Rules 12(d) and 12(h)(3) of the Federal Rules of Civil Procedure dismissing this action for want of subject matter jurisdiction pursuant to 28 U.S.C. § 1359 and plaintiff having duly submitted affidavits in opposition to defendant's motion and said motion having regularly come on to be heard at a hearing at this Court on May 2, 1975;

AND upon reading and filing the notice of motion dated April 3, 1975, the affidavits of Robert MacCrate, sworn to April 3, 1975 and May 2, 1975, together with the exhibits thereto, with due proof of service thereof, in support of the motion;

AND upon reading and filing the affidavit of Nathan M. Shippee, sworn to April 28, 1975, and the supplemental affidavit of Thomas R. Farrell, sworn to May 7, 1975, together with exhibits thereto, with due proof of service thereof, in opposition to the motion;

AND after hearing Messrs. Sullivan & Cromwell, attorneys for defendant, in support of said motion, and

Messrs. Gold, Farrell & Marks, attorneys for plaintiff, in opposition to said motion and due deliberation having been had and a memorandum decision denying the defendant's motion for the reasons stated therein having been rendered by this Court on June 17, 1975, it is hereby ORDERED, ADJUDGED and DECREED:

1. The defendant Phillips Petroleum Company's motion to dismiss the complaint on the ground of lack of subject matter jurisdiction be and the same is hereby denied.

2. In accordance with 28 U.S.C. 1292(b), the Court is of the opinion and hereby certifies that the within Order denying defendant's motion to dismiss the complaint on the ground of lack of subject matter jurisdiction involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the within Order may materially advance the ultimate termination of this litigation, which will otherwise require a protracted jury trial unrelated to the question of subject matter jurisdiction before this jurisdictional issue is finally resolved.

s/ Charles L. Brieant, Jr.
U.S.D.J.

Dated: July 7, 1975
At New York, N.Y.

Order of the United States Court of Appeals for the Second Circuit,

dated August 13, 1975

75-9202

p. 16

UNITED STATES COURT OF APPEALS

A 493

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the Thirteenth day of August, one thousand nine hundred and seventy-five.

Phillips Petroleum Company,

Plaintiff-Petitioner,

v.

Prudential Oil Corporation,

Defendant-Respondent.

It is hereby ordered that the motion made herein by counsel for the

~~appellant~~ ~~appellee~~ petitioner ~~respondent~~

~~by notice of motion~~ dated July 17, 1975 for leave to appeal pursuant to 28 USC §1292 (b) and Rule 5 of the Federal Rules of Appellate Procedure

be and it hereby is ~~granted~~ denied

~~for the reasons stated~~

JAMES L. OAKES

ELLSWORTH A. VAN GRAAFEILAND

THOMAS J. MESKILL Circuit Judges

Memorandum of Judge Brieant, Dedember 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRUDENTIAL OIL CORPORATION,

Plaintiff,

-against-

PHILLIPS PETROLEUM COMPANY,

Defendant.

67 Civ. 3748-CLB

MEMORANDUM AND ORDER

Brieant, J.

At a pre-trial conference on November 25, 1975 in this diversity action, the Court requested the parties to reach some accommodation concerning plaintiff's belated request for the production of financial statements of Phillips Puerto Rico Core, Inc.

Defendant then applied to this Court for relief in the nature of a protective order barring discovery of this information, contending that this information ceased to be relevant to the issues remaining in this case in view of plaintiff's election to abandon its equitable claim and pursue its legal remedy for money damages.

On December 9, 1975, in an effort to have this hoary cause proceed to trial without further delay, the parties agreed to the production of financial statements relating to the operations of Core from January 1968 through December 1972, without prejudice to defendant's contention that plaintiff's claimed election bars further proceedings upon the equitable claims. The Pre-trial Order made November 19, 1975 herein sets forth (p. 65) two separate "positions" as to the issues to be tried.

The claims pleaded seek equitable relief and/or damages under New York law. Plaintiff seeks to vindicate its rights in an alleged joint venture with defendant for the establishment of an oil refinery and petrochemical facility in Puerto Rico. The underlying legal theories have been stated variously as an equitable action to impress a trust, or for an accounting, or for damages arising in contract, quasi-contract or out of the intentional tort of misappropriation. The relief requested includes (1) an accounting of the joint venture and a division of the respective rights and interests of the parties; (2) impressing a trust on defendant's property; (3) a judgment directing payment over to plaintiff of its rights in the venture;

and (4) such other and further relief as the Court may deem just and proper.

Defendant had moved previously to strike plaintiff's jury demand claiming that plaintiff did not have a constitutional right to a jury trial since its claims were equitable. In a memorandum decision dated April 4, 1975 (392 F.Supp. 1018), Chief Judge Edelstein denied defendant's motion, holding that the complaint stated both legal and equitable claims, and that joinder of these claims did not bar plaintiff's right to have the legal issues determined by a jury.

Defendant now claims that plaintiff irrevocably elected to pursue its legal remedies, is precluded from relief in the nature of imposing a constructive trust or directing an accounting, and is remitted to its claims for money damages. The contention appears to be founded upon two grounds: first, that in opposing defendant's motion to strike the jury demand, plaintiff represented to the Court that its claims were for money damages; and second, that plaintiff's long delay in pursuing claims which arose in 1962 has enabled it, without bearing the risk inherent in this commercial venture, to claim a joint venturer's share of the project's success.

Regarding election of remedies we will apply New York law. Arber v. Essex Wire Corporation, 490 F.2d 414 (6th Cir. 1974); Berger v. State Farm Mutual Automobile Insurance Company, 291 F.2d 666 (10th Cir. 1961). See also Myzel v. Fields, 386 F.2d 718, 740, n. 15 (8th Cir. 1967), cert. denied, 390 U.S. 951 (1968). Both Rule 8(a), F.R.Civ.P., and §§3002 and 3017 of the New York CPLR permit pleading in the alternative, and joinder of legal and equitable claims in a single complaint.

The doctrine of election of remedies "represents a harsh and arbitrary principle designed only to prevent vexatious litigation" and "should be applied only where there has been an irrevocable election." Strong v. Reeves, 280 App. Div. 301, 114 N.Y.S.2d 97, 101 (3d Dept. 1952), aff'd., 306 N.Y. 666 (1953). See also Friederichsen v. Renard, 247 U.S. 207 (1917). Accordingly, it has been the policy of the New York courts to apply "a liberal doctrine ... rather than a narrow and harsh one" in regard to the election of remedies. Pomerantz v. Massachusetts Accident Co., 169 Misc. 434, 7 N.Y.S.2d 854, 855 (Sup. Ct., N. Y. County 1938).

Under New York law, for an election of remedies to bar the pursuit of alternative relief, legal and equitable, a party

must have chosen one of two or more co-existing inconsistent remedies, and in reliance upon that election, that party must also have gained an advantage, or the opposing party must have suffered some detriment. Hill v. McKinley, 254 App. Div. 283, 4 N.Y.S.2d 656 (1st Dept. 1938); In re Motor Vehicle Accident Indemnification Corp. v. McTootle, 236 N.Y.S.2d 588 (Sup. Ct., Nassau County 1963). See also Wolak v. United States, 366 F.Supp. 1106 (D. Conn. 1973); Twentieth Century-Fox Film Corp. v. National Publishers, Inc., 294 F.Supp. 10 (S.D.N.Y. 1968).

For remedies to be inconsistent, it must be shown that "a certain state of facts relied on as the basis of a certain remedy is inconsistent with, and repugnant to, another certain state of facts relied on as the basis of another remedy." 25 Am.Jur.2d, Election of Remedies §11. The mere availability of, and request for more than one remedy, does not satisfy the requirement of inconsistent theories, for the remedies may be consistent or cumulative. See Pierce v. United States, 255 U.S. 398 (1921). Plaintiff's legal and equitable claims are not inherently inconsistent. An accounting of partnership assets and a claim for damages arising from a breach of the partnership agreement are

alternative remedies, both of which are consistent with the theory that there was an agreement. Likewise, a claim for tort damages, and the impressing of a constructive trust need not be inconsistent, and are not so regarded in this action.

Defendant contends that an election was made in the course of the argument before Chief Judge Edelstein where plaintiff stated:

> "This is not a case seeking an accounting between two parties who are concededly joint venturers and who wish merely to wind up their affairs.... Prudential's claim is grounded upon a tort cognizable at common law, and is entitled to a jury determination of Phillips' breaches, deceit and misappropriation." (Memorandum in Opposition to Motion to Strike Plaintiff's Demand for Jury Trial, p. 37).

Defendant also contends that in reliance upon this representation, plaintiff prevailed and obtained the Chief Judge's ruling sustaining its right to a jury trial. Under appropriate circumstances, the argument of one theory of the case upon a motion may constitute an election of remedies. Rodriguez v. Northern Auto Auction, Inc., 225 N.Y.S.2d 107 (2d Dept., App. T. 1962). However, Chief Judge Edelstein's opinion, 392 F.Supp. 1018, does not support defendant's

claim that the Court believed plaintiff had abandoned its suit for equitable relief. That decision contemplates that the case would be tried to a jury, reserving to the Court those issues affecting the propriety of equitable relief. However much plaintiff may have overstated on the argument, in characterizing its claims as legal in nature, plaintiff is not to be estopped from seeking equitable relief, since the Court readily perceived the mixed nature of the issues.

Defendant's second argument rests upon the entire course of plaintiff's conduct since the time it was allegedly wronged. Defendant argues persuasively that plaintiff, in equity, should not be permitted to delay pursuit of its claim, while Phillips bore all the risk of the venture, and now seek a partner's share of what success the project had. This argument, however, does not rest upon an election of remedies so much as it does upon questions of laches, estoppel, waiver, fairness and the adequacy of plaintiff's remedy at law. Accordingly, this issue is best left for the Court's determination in deciding whether equitable relief should be granted upon the entire trial record. See Turner v. American Metal Co., 268 App. Div. 239, 50 N.Y.S.2d 800 (1st Dept. 1944).

If it appears during the trial that an election of remedies must be made, it is within the Court's power to compel an election at that time. In Lukaris v. Harrison Vending Systems, Inc., 28 App. Div. 2d 1019, 283 N.Y.S.2d 674, 676 (3d Dept. 1967), the Court stated: "At what point in the trial an election must be made will have to be determined by the Trial Judge in the light of the record as it develops." However this case may be presented to the jury upon plaintiff's contract, quasi-contract and tort theories, relief, whether at law or in equity, will issue only once. See New York CPLR §3002, Practice Commentary §3002:14, at 534-36 (McKinney's 1974).

Defendant's motion to strike plaintiff's equitable claims based upon a claimed election of remedies is denied. In addition to the matters set forth in paragraphs (1) through (8) and (15) of Section 4 of the aforementioned Pre-trial Order upon which the parties agree, there remains for trial the issues contained in paragraphs (9) through (14) inclusive. The issues for trial shall comprise (9) as formulated by the plaintiff without opposition, (10) and (11) as formulated by the defendant, (12) and (13) as formulated by the plaintiff, and (14A) and (14B) as

formulated by the defendant.

So Ordered.

Dated: New York, New York
December 30, 1975

CHARLES L. BRIEANT, JR.

CHARLES L. BRIEANT, JR.
U. S. D. J.

Memorandum and Order of Judge Brieant,

March 3, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRUDENTIAL OIL CORPORATION,

Plaintiff,

-against-

PHILLIPS PETROLEUM COMPANY,

Defendant.

67 Civ. 3748-CLB

MEMORANDUM AND ORDER

Brieant, J.

By a general verdict, amplified and supplemented by the answers to Special Interrogatories, the jury in this diversity case on January 26, 1976 found that plaintiff's corporate predecessor, Prudential Oil Corporation (Connecticut), acting through Messrs. Shippee, Willey and Young, developed and owned a legally protected business concept, as defined in the Court's instructions, relating to the establishment of a petrochemical core facility in Puerto Rico; that Phillips obtained disclosure of this legally protected business concept as a result of a relationship of trust and confidence with plaintiff's predecessor; that Prudential disclosed its concept to Phillips or made a contribution of ideas or services relating to the

development of those ideas as a result of a contract implied in fact; and that Phillips used Prudential's legally protected business concept or contribution of ideas or services relating to the development of those ideas of Prudential Connecticut in the petrochemical core facility actually constructed by Phillips in Puerto Rico, or in an application or presentation necessary to effect its construction.

The jury then awarded damages in the amount of $1,500,000.00 and advised further that the tortious misappropriation or the taking of the ideas pursuant to a contract implied in fact, occurred on December 16, 1963.

By motion filed February 17, 1976, defendant moves for judgment notwithstanding the verdict. Its contentions are dealt with separately below.

I

Defendant first contends that a contract implied in fact was not shown to exist by the required standard of proof which, resolving all matters of credibility and weight, favorably to plaintiff, would permit any juror reasonably so to conclude.

The parties have tried the case in accordance with the substantive law of New York, and there are sufficient contacts with New York to justify such a choice of law. In New York, when something of value is tendered by one party to another for evaluation, looking towards a mutually beneficial commercial agreement, and the second party accepts, takes and uses what is tendered, without reaching an express agreement, a contract implied in fact may be said to arise. Robbins v. Frank Cooper Associates, 19 A.D.2d 242, 241 N.Y.S.2d 259 (1st Dept. 1963), rev'd. on other grounds, but rule approved, 14 N.Y.2d 913 (1964); American TCP Corp. v. Strauss Stores Corp., 206 Misc. 1017, 136 N.Y.S.2d 76 (N.Y. Co. Sup. 1954), aff'd. 285 App.Div. 1132, 140 N.Y.S.2d 884; Restatement, Restitution, §107(2).

There is ample evidence here to support a conclusion that Prudential's principals delivered their work product to Phillips, anticipating an agreement to enter upon a joint venture. No such joint venture agreement was ever made by Phillips. Having failed to enter into a joint venture, as was its right, Phillips became liable in quantum meruit, or pursuant to a contract implied in fact, for the value of what it took and used.

Indeed, depending on the circumstances, almost any taking of a legally protected concept, following business negotiations between the owner of the concept and the taker, can justify a jury finding of a contract implied in fact. This is so because the presumption is in favor of innocence and against the existence of fraud. This presumption against fraud, although not comprised within the instructions given our trial jury, is particularly strong. See Richards v. Kaskel, 40 A.D.2d 804, 338 N.Y.S.2d 279, 281 (1st Dept. 1972) and cases therein cited. It justifies a finding of a contract implied in fact, rather than a finding of tortious wrongdoing, to the extent that Phillips' access to the concept was through Phillips' employee Fischbeck.

This jury verdict will not be voided now at defendant's behest, simply because of any theoretical inconsistency between a contract implied in fact, and a tortious misappropriation of the legally protected business concept.

This is so because no objection was taken on this ground to the form of special interrogatory submitted to the jury. See transcript p.2199, et seq. where defendant requested other changes in the form of interrogatories to the jury, culiminating with the

following (Tr. p. 2205):

> THE COURT: "The purpose of the interrogatories primarily is to protect everyone's interests, including the Court, so we will know how the jury got there. If you all wanted to take a general verdict, I would probably permit it, but I gather you don't.
>
> MR. MacCRATE (defendant's counsel): No, your Honor, we do want these special interrogatories."

Defendant contemplated the likelihood that the jury would hold in favor of plaintiff on more than one theory. Nothing on the form of interrogatories militated against such a result. The Court instructed the jury without exception (Tr. pp. 2266-67):

> "Although more than one theory of liability has been presented to you for your determination, the plaintiff may recover only once for its damages, if you find that it has been damaged.
>
> Since the different theories of liability suggest different computations of damages, if you find the defendant liable on two distinct theories and you find in computing the damages as I have instructed you that different amounts of damages are applicable, you should award the plaintiff damages in the larger of the two amounts."

It is now too late to claim such an instruction was improper.

Indeed, after the plaintiff had rested, defendant presented the testimony of Roy M. Waldby, its Manager of Puerto Rican operations,

from which it became abundantly clear that defendant had in fact misappropriated plaintiff's concept, and had done so tortiously. Mr. Waldby testified on his direct examination (Tr. p. 1666):

"Q Well, did you also have an assignment with respect to a Puerto Rican project?

A I did.

Q Now, how did that come about; can you tell us the circumstances?

A On or about August the 7th [1963], Mr. Miller Conn, my superior, ... called me into his office after a visit which I understood from him to be with Oscar Chapman of Washington, D.C., and told me that we had an opportunity to obtain permission to bring in large quantities of feedstock, into Puerto Rico, if we could make better than fifty percent petrochemicals from them, and he asked me to apply myself to the problem as to how we could produce those volumes of petrochemicals.

* * *

Q Mr. Waldby, did Mr. Conn give you any materials, any papers at that time?

A Yes, sir, he did. I'm not sure whether in his office or on the way out of his office, but in that time period, yes, sir.

* * *

Q I show you now the original exhibit [P-215], Mr. Waldby, and ask you if that was used in the materials given to you by Mr. Conn at that time in August of 1963.

A Yes, sir, to the best of my -- it is now my belief that this was among the materials given to me by Mr. Conn

Q Did Mr. Conn tell you anything about the materials that he gave to you at that time?

* * *

A Mr. Conn told me that the material which he gave me was to be treated confidential."

Exhibit P=215 was a brochure prepared by Prudential, with Prudential's name on it. Oscar Chapman, a Washington, D.C. lawyer, had acted for Prudential, and later, for Phillips. If believed, the foregoing testimony shows intent to misappropriate Prudential's brochure and its contents, and use it in aid of an application by Phillips to implement a petrochemical core plant in Puerto Rico, and although not known to plaintiff prior to trial, justifies and supports a verdict on the tort claim.[1/]

II

Defendant also claims it is entitled to a partial judgment n.o.v., dismissing so much of the claim as is based upon the theory of a breach of contract implied in fact, on the ground that the claim is barred

by New York CPLR §213 as having arisen more than six years prior to January 16, 1976, the date during trial upon which the plaintiff moved to conform its allegations to its proof. This latter motion was of course, advisable, but unnecessary. See Rule 15(b), F.R.Civ.P.

The taking took place on December 16, 1963, and this action was filed on September 27, 1967. The complaint was sufficient to set forth a claim for relief based on a contract implied in fact. It complied fully with Rule 8, F.R.Civ.P., in that it contained a statement of the jurisdictional grounds, [diversity] and set forth in greater detail than usual the claimed transactions concerning the Puerto Rican petrochemical core refinery. The pleading was sufficient to give defendant notice that it was being held in damages, and for equitable relief, arising out of its transactions with plaintiff and the Commonwealth concerning the Puerto Rican core refinery, consequent upon and following defendant's letter to plaintiff dated November 12, 1962, which was actually attached to the pleading. The parties were not strangers to each other, and by the time the pleading had been filed, as a result of extensive attempts by Prudential to settle its claims, defendant well knew plaintiff's factual contentions.

Under such circumstances, it is inappropriate to hold that any claim arising out of these transactions between these parties, after November 1962 concerning the Puerto Rican petrochemical core facility is barred by statutes of limitations. To hold otherwise would invite the prolix pleading of separately stated causes of action, founded on separate theories of substantive law, but arising out of the same course of dealing, just the type of pleading with which the New York state courts are plagued, and which Rule 8, F.R.Civ.P. was intended to avoid. The history of the Federal Rules is too well known to require documentation of this statement. A complaint is good in this Court unless it appears beyond doubt that the pleader can prove no set of facts in support of his claim which would entitle him to relief. United States v. VanRaalte Co., 328 F.Supp. 827, 829 (S.D.N.Y. 1971).

III

Additional bases in support of the motion are set forth in the memorandum of law filed in support thereof but not contained in the motion papers. These have all been considered by the Court. For the most part they have been resolved adversely to the defendant by the verdict of our jury, which the Court believes, resolving all

issues of credibility, and drawing all permissible inferences from the evidence most favorably to plaintiff was not so unreasonable as to be disturbed by the Court.

Defendant's motion for judgment notwithstanding the verdict is denied.

So Ordered.

Dated: New York, New York
March 3, 1976

CHARLES L. BRIEANT

CHARLES L. BRIEANT
U. S. D. J.

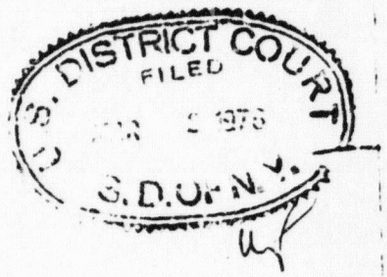
FOOTNOTE

1. Plaintiff tried its case on the factual contention that Phillips had access to Prudential's brochure (Exhibit P-215), as shown by the fact that certain verbiage of marginal utility had been plagiarized verbatim in a brochure which Phillips later submitted in its own behalf to officials of the Economic Development Administration ("EDA") of the Commonwealth of Puerto Rico. In support of this theory, plaintiff showed that its brochure had been made available previously to Dr. Dale Fischbeck, Phillips' man in New York, who, as a courtesy to Prudential, had caused the brochure to be reproduced by Phillips' photocopy facilities.

It was not until defendant proffered the testimony, recited herein, of Roy Waldby that plaintiff realized that the more probable means of access was not from Prudential to Fischbeck to Waldby to the EDA, a mode of access consonant with the theory of a contract implied in fact, but rather that access was from Prudential to its attorney Oscar Chapman, to Conn of Phillips, who in turn delivered Prudential's brochure to Waldby with a direction to keep it confidential. Waldby was in charge of producing Phillips' plagiarized brochure above mentioned. This

Findings of Fact and Conclusions of Law
of Judge Brieant, March 3, 1976

A 514



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

PRUDENTIAL OIL CORPORATION, :

Plaintiff, : 67 Civ. 3748 (CLB)

-against- :

PHILLIPS PETROLEUM COMPANY, :

Defendant. :

- x

~~DEFENDANT'S PROPOSED~~ FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. As to so much of the claims of plaintiff as is based on the theory that a joint venture existed between it and defendant --

The Court concludes:

There was no legally enforceable joint venture created between Phillips and Prudential Connecticut or between Phillips and Messrs. Shippee, Willey and Young acting directly or through Prudential Connecticut, for the reasons that:

A. On the evidence a joint venture consisting of Prudential Connecticut and Phillips, or of Phillips and Messrs. Shippee, Willey and Young, acting directly or through Prudential Connecticut, was not shown to exist by the required standard of proof which, resolving all matters of credibility and weight of the evidence favorably to plaintiff, would permit any juror reasonably so to conclude.

Page 1244 line 5 through page 1245 line 10 are here incorporated by reference from the Trial Transcript.

MICROFILM
MAR 2 1976

B. As additional and independent reasons for dismissing any claim based on the theory of a joint venture:

(1) Plaintiff claimed at trial that a joint venture existed between plaintiff and defendant predicated upon defendant's application for an oil import allocation in its own name but for the actual use and benefit of plaintiff as an undisclosed principal.

(2) The identity of an applicant for an oil import allocation, the applicant's importing history and its other qualifications were material factors in any determination by officials of the Department of the Interior in issuing oil import allocations.

(3) It would have been unlawful, against public policy and fraudulent for Phillips to have agreed with Prudential Connecticut that Phillips would make an application in its own name for an oil import allocation for the benefit of itself and Prudential Connecticut and/or others as undisclosed principals or joint venturers, and any such agreement, even if made, would be unenforceable.

CLB/USDJ

II. As to plaintiff's claims for equitable relief -- The Court finds:

(A) With the passage of time and the independent actions taken by Phillips in the development of its petrochemical facility in Puerto Rico, as well as other changes in general circumstances, there is no identifiable res

BEST COPY AVAILABLE

presently existing on which the Court might properly impress a trust.

CLB/USDJ By reason of (B) Changes in general circumstances, including the activities of the Organization of Petroleum Exporting Countries (OPEC) and the increase in the price of imported oil which have substantially affected the value of any oil import quota after 1965, and fundamental changes in and affecting the position of the parties, including the assumption by Phillips of obligations to the Puerto Rican Government which Phillips has in significant respects fulfilled and the substantial investment by Phillips in facilities in Puerto Rico and in their operation, it would be inequitable at this time to impress a trust on an undivided interest or on any minority stock interest in Phillips Puerto Rico Core, Inc.

The Court concludes:

A. The plaintiff has an adequate remedy at law.

B. The plaintiff has failed to prove that it is entitled to any equitable relief.

III. As to so much of the claims of plaintiff as is based on the theory of contract implied in law, quasi-contract and unjust enrichment --

The Court concludes:

Not found CLB/USDJ In view of the jury's determination that a contract existed between plaintiff and defendant providing for the compensation by defendant of plaintiff for its concept, ideas or services with regard to a petrochemical core plant in Puerto Rico, plaintiff's claim for an award based on a theory of contract implied in law, quasi-contract or unjust

BEST COPY AVAILABLE

enrichment with regard to such concept, ideas or services cannot be maintained.

IV. As to so much of the claims of plaintiff as is based on the theory of misappropriation or breach of confidential relationship --

The Court concludes:

In view of the jury's determination that a contract existed between plaintiff and defendant providing for the compensation by defendant of plaintiff for its concept, ideas or services, plaintiff's claim for an award based on a theory of misappropriation of any such concept or ideas or of breach of a confidential relationship cannot be maintained.

V. <u>As to so much of the claims of plaintiff as is based on the theory of a breach of contract implied in fact (in support of Judgment Notwithstanding the Verdict)</u> --

The Court finds:

(A) At all times prior to January 16, 1976 plaintiff claimed in this action that whatever action was undertaken by defendant Phillips with respect to a petrochemical facility in Puerto Rico was undertaken for and on plaintiff's behalf and at no time during said period did plaintiff claim that defendant acted for itself and solely on defendant's own behalf.

not found CCB/USDJ

(B) On January 15, 1976 in open court counsel for plaintiff maintained that there was nothing in the record that indicated that Shippee or plaintiff was going to sell anything and get a fee for it.

(C). On January 16, 1976, plaintiff for the first time claimed that it had an agreement with defendant pursuant to which defendant was to pay plaintiff for the use of plaintiff's business ideas.

(D) Plaintiff's claim of an agreement implied in fact was based upon facts other than those alleged in the complaint which was filed in this action on September 27, 1967 and the complaint did not give notice of the transactions and occurrences to be proved pursuant to the amendment to the complaint made on January 16, 1976.

(E) The amendment of the complaint made by the plaintiff on January 16, 1976 was made after the plaintiff had rested and the defendant had no opportunity to examine plaintiff with respect thereto and defendant by said amendment was prejudiced in maintaining its defense on the merits.

Not found CLB/USDJ

The Court concludes:

A. On the evidence, a contract implied in fact pursuant to which defendant was to pay plaintiff for the use of plaintiff's business ideas was not shown to exist by the required standard of proof which, resolving all matters of credibility and weight of the evidence favorably to plaintiff, would permit any juror reasonably so to conclude.

B. Defendant, in any event, is entitled to a judgment dismissing so much of the claims of plaintiff as is based upon the theory of a breach of a contract implied in fact on the ground that any such claim is barred by Civil Practice Law and Rules § 213 as having arisen more than six years prior to January 16, 1976, the date on which such claim was first asserted by plaintiff against defendant.

~~VI. As to damages and interest with respect to~~ plaintiff's claim based on the theory of breach of a contract implied in fact --

CLB/USDJ

If the Court ~~declines~~ to adopt the proposed findings and conclusions with respect to ~~section~~ V, supra, defendant requests that the Court in the alternative ~~make the following findings and conclusions.~~

III The Court finds:

(A) At no time up to and including January 27, 1976, the date of the verdict by the jury in this action, did plaintiff or any predecessor in interest make demand upon defendant Phillips for any definite and ascertainable amount of damages with respect to the breach of any contract implied in fact.

(B) The complaint in this action was filed on September 27, 1967 and alleged ~~four separate claims in each of which it was alleged~~ that plaintiff had no adequate remedy at law.

CLB/USDJ

(C) The complaint included in addition to the prayers for equitable relief, claim for losses, damages, costs and expenses, but it contained no ~~claim~~ demand for a definite or ascertainable amount of damages.

CLB/USDJ

(D) At all times prior to January 16, 1976 plaintiff claimed in this action that whatever action was undertaken by defendant Phillips with respect to a petrochemical facility in Puerto Rico was undertaken for and on plaintiff's behalf and at no time during such period did plaintiff claim that Phillips acted for itself and solely on Phillips' own behalf, except as appears from the complaint and the reported opinions in this action.

~~(E) On January 15, 1976 in open court, counsel for~~ plaintiff maintained that ~~there was nothing~~ in the record ~~that indicated that Shippee~~ or plaintiff was ~~going~~ to sell ~~anything and get a fee for it.~~

the total record speaks for itself and for that reason I decline to so find as requested in (E) CLB/USDJ

(F) No amendment of the complaint was made until January 16, 1976, after plaintiff had rested and after the Court had ruled that no legally enforceable joint venture existed between plaintiff and Phillips; on that day the plaintiff, over defendant's objection, was granted leave to amend its complaint to assert a claim for breach of an implied in fact contract~~x which claim was inconsistent with the allegations of the complaint as filed in this action in 1967.~~

CLB/USDJ

(G) On January 16, 1976 plaintiff for the first time claimed that it had an agreement with defendant pursuant to which defendant was to pay plaintiff for the use of plaintiff's business ideas.

(H) At no time prior to January 16, 1976 did plaintiff ever allege that there existed between it and defendant Phillips a contract implied in fact and at no time has plaintiff expressly alleged the breach of any such contract, fixed the date at which any such contract is alleged to have been breached or the time when pursuant to any such contract defendant was to have made payment to plaintiff.

CLB/USDJ

(I) ~~Plaintiff's claim of an agreement implied in fact was based upon facts other than those alleged in the complaint filed in 1967 and~~ the complaint did ~~not~~ give notice of the transactions and occurrences to be proved for purposes of establishing a contract implied in fact.

~~(J) There is no basis in the record for a finding that~~ defendant Phillips ~~breached a contractual~~ obligation to pay any amount to ~~plaintiff~~ on December 13, 1963 nor ~~did the jury so find~~.

Not found

~~(K) Any sum found to be payable~~ by defendant to plaintiff with respect to any contract ~~implied~~ in fact remained at all times ~~indefinite~~ and unascertainable by ~~defendant~~ until it was ~~fixed by the jury in its verdict on January 27, 1976~~.

Not found

The Court also finds and concludes:

By reason of §5001, New York CPLR, plaintiff is entitled to interest on the award of damages from December 16, 1963 to the date of filing of Judgment at the statutory rates in effect from time to time in the courts of the State of New York, as computed in the Judgment signed simultaneously herewith. State law supplies the rule of decision in this diversity action, and this Court lacks power to diminish the amount of pre-judgment interest for unconscionability, or in the exercise of its inherent supervisory power over the administration of justice. Delay in bringing this cause to trial is not directly chargeable to any party.

SO FOUND AS ABOVE STATED.

Dated: New York, New York
~~February 19, 1976~~
March 2, 1976

Charles L. Brieant

CHARLES L. BRIEANT
U. S. D. J.

DISTRICT COURT
FILED
MAR 4 1976
S.D.OF N.Y.

A 522

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRUDENTIAL OIL CORPORATION,

Plaintiff,

-against-

PHILLIPS PETROLEUM COMPANY,

Defendant.

67 Civ. 3748-CLB

JUDGMENT

76,174

This action having regularly come on for trial before this Court and a jury, the undersigned presiding, on January 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26 and 27, 1976, and the issues having been duly tried, and

The Court having granted defendant's motion to dismiss so much of the claim of plaintiff as is based on the theory that a joint venture existed between plaintiff and defendant and so much of the claims of plaintiff as sought equitable relief, and the Court thereafter having granted plaintiff's motion to amend its complaint to conform to the proof, pursuant to Rule 15(b), F.R.Civ.P. to assert a claim for money damages based upon an

alleged breach of a contract implied in fact, and

The Court having submitted special interrogatories to the jury, and the jury having answered such special interrogatories, and the jury having also rendered a general verdict in favor of plaintiff and against defendant on plaintiff's claims alleging a breach of a contract implied in fact and a tortious misappropriation of a legally protected business concept, in the amount of $1,500,000.00, and

The Court having made its findings of fact and conclusions of law with respect to its determinations herein, dated and filed simultaneously herewith; it is

ORDERED, ADJUDGED AND DECREED that so much of the claim of plaintiff as is based on the theory that a joint venture existed between it and defendant is dismissed with prejudice, and it is further

ORDERED, ADJUDGED AND DECREED that all claims of plaintiff for equitable relief are dismissed with prejudice, and it is further

ORDERED, ADJUDGED AND DECREED that so much of the claim of plaintiff as is based on the theory of a contract implied in law, quasi-contract or unjust enrichment is dismissed with prejudice, and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff Prudential Oil Corporation have judgment against defendant Phillips Petroleum Company upon the verdict in the amount of $1,500,000.00 with interest as follows:

From December 16, 1963 to June 30, 1968 at 6%	- $	408,750.00
July 1, 1968 to February 15, 1969 at 7 1/4%	-	67,968.70
February 16, 1969 to August 31, 1972 at 7 1/2%	-	398,750.00
September 1, 1972 to March 2, 1976 at 6%	-	315,500.00
Total Interest		$1,190,968.70

making a total of $2,690,968.70, together with costs to be taxed.

Dated: New York, New York
March 2, 1976

Charles L. Brieant
CHARLES L. BRIEANT
U. S. D. J.

JUDGMENT ENTERED - 3/3/76
Raymond F. Burghardt
CLERK

Memornadum Endorsement of Judge Brieant,

March 25, 1976

MEMO. ENDORSED — MEMORANDUM ENDORSEMENT

ORIGINAL 525

Prudential Oil Corporation v.
Phillips Petroleum Co.

67 Civ 3748 (CLB)

The Court adheres to its conclusion previously expressed, that New York CPLR §5001 requires an award of pre-verdict interest from the date of the taking of plaintiff's concept. The case of DeLong Corp. v. Morrison-Knudsen Co., 14 N.Y.2d 346 (1964) relied on by movant suggests that under that statute, and prior New York decisional law, pre-verdict interest in an intentional tort against property, as well as in a breach of contract, is recoverable as a matter of right, measured from the date of accrual of the cause of action. That date is, as found by our jury, December 16, 1963. It is of no use to speculate that in negotiated terms, payment would not have been made until the import permits were received, or until the refinery was on stream.

Defendant, with full knowledge that it had used plaintiff's brochure first in 1963, failed to plead the affirmative defense of the three year statute of limitations. It is no longer available. Strauss v. Douglas Aircraft Co. 404 F.2d 1152 (2d Cir. 1968).

That portion of the motion which seeks a new trial on the ground of excessiveness of the verdict presents a more difficult issue. The verdict is larger by far than we would award in a bench trial, resolving all fact issues in favor of plaintiff. This does not end the matter. Our jurors are entitled to apply to the cases before them their common sense and their perception of truth and value. If their function seems vestigial in commercial disputes, it must be remembered that they are not inhibited by the jaded cynicism of lawyers and judges who know only to well that "it is hard to make money easy".

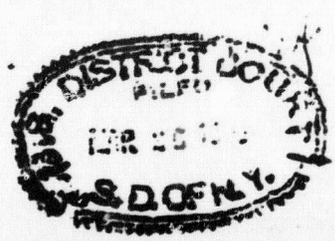
The petrochemical core facility was successful and highly profitable until the international oil cartel became active. The award of compensatory damages was supported by sufficient evidence, and there is no affirmative evidence of passion or prejudice. Every fair intendment should be accorded to the work of our jury. Although we regard the verdict as high, it is not so unreasonable as to justify setting it aside. Cf. Schotzka v. American Export Isbrantsen Lines, Inc., 311 F. Supp 77 (SDNY 1969).

All other matters raised in the within motion and not previously discussed in prior post trial decisions, have been considered and rejected. The motion is in all respects denied.

SO ORDERED.

New York, N. Y.
March 25, 1976

Charles L. Brieant
United States District Judge



Defendant's Notice of Appeal April 23, 1976

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A 526

PRUDENTIAL OIL CORPORATION,

Plaintiff,

-against-

PHILLIPS PETROLEUM COMPANY,

Defendant.

67 Civ. 3748 (CLB)

NOTICE OF APPEAL

Notice is hereby given that Phillips Petroleum Company, the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from that part of the final judgment entered in this action on the 3rd day of March, 1976 which granted judgment against Phillips Petroleum Cmpany upon the verdict in the amount of $1,500,000, and awarded total interest in the additional amount of $1,190,968.70, for a total judgment of $2,690,968.70, with costs to be taxed, and from the opinion and order, entered March 3, 1976, which denied defendant's motion for judgment notwithstanding the verdict, and from the opinion and order, entered on March 26, 1976, which denied Phillips' motion to amend the judgment and for a new trial.

Dated: April 23, 1976
New York, New York

SULLIVAN & CROMWELL

By Robert MacCrate /RSH
Robert MacCrate
Attorneys for Defendant
48 Wall Street,
New York, New York 10005.
(212) 952-8100

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

- x

PRUDENTIAL OIL CORPORATION, :

Plaintiff-Appellee, :

-against- : Docket No. 76-7207

PHILLIPS PETROLEUM COMPANY, :

Defendant-Appellant. :

- x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

GEORGE A. SCHOLZE, being duly sworn, deposes and says that he is an attorney associated with Sullivan & Cromwell, attorneys for Defendant-Appellant; that on the 2nd day of September, 1976 he caused the within Appendix to be served upon Gold, Farrell & Marks, attorneys for Plaintiff-Appellee by having two true copies of the same delivered to said attorneys at 595 Madison Avenue, New York, N.Y. 10022, by leaving the same with a person in charge of said office.

George A. Scholze

Sworn to before me this
2nd day of September, 1976

Bruce H. Auch
Notary Public

BRUCE H. AUCH
Notary Public, State of New York
Residing in Queens County
Queens Co. Clk's Cert. No. 31-1609628
Certificate filed in
New York Co. Clk's
Commission expires March 30, 1977